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Judicial Inquiry Into the Care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton

**His Honour
Judge H. Ward Allen**



VOLUME 1



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1982

VOLUME 1

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His Honour
H. Ward Allen
Judge

Nicholson D. McRae, Q.C.
Counsel to the Inquiry

Robert G. Murray
Associate Counsel

Tom Hill
Executive Secretary

Judicial Inquiry Into the Care of
Kim Anne Popen by the Children's Aid
Society of the City of Sarnia and the
County of Lambton

116 Front Street South
Sarnia, Ontario
N7T 2M4
Telephone 332-1610

October, 1982.

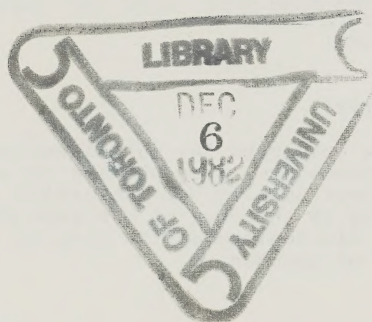
The Honourable Mr. Frank Drea
Minister of Community and
Social Services
80 Grosvenor Street
6th Floor, Hepburn Block
Toronto, Ontario
M7A 1E9

Dear Mr. Minister:

I have now completed the duties assigned to me by your predecessor. I am pleased to enclose herewith my report upon my investigation of all matters relating to the care of Kim Anne Popen by the Children's Aid Society of the City of Sarnia and the County of Lambton.

A handwritten signature in cursive script, reading 'H. Ward Allen'.

H. Ward Allen



Terms of Reference

Copy of order by The Honourable Keith C. Norton,
dated the 1st of March, 1978.

IN THE MATTER OF an investigation pursuant to section
3 of The Child Welfare Act, R.S.O. 1970, Chapter 64,
as amended

AND IN THE MATTER OF the care of Kim Anne Popen by
the Children's Aid Society of the City of Sarnia and
the County of Lambton

AND IN THE MATTER OF the operation of the Children's
Aid Society in the City of Sarnia and the County of
Lambton under The Child Welfare Act

ORDER

IT IS HEREBY ORDERED that, pursuant to the provisions
of section 3 of The Child Welfare Act and effective
the 28th day of February, 1978, His Honour Judge H.
Ward Allen a Judge for the County and District Courts
of the Counties and Districts of Ontario be and he is
hereby appointed,

1. To investigate all matters relating to the care
of Kim Anne Popen by the Children's Aid Society of
the City of Sarnia and the County of Lambton,
including,

- (a) the circumstances relating to the removal,
care, return and supervision of Kim Anne
Popen by the said Society, and
- (b) the actions of and performance of duties by
the said Society and its officers, employees,
agents and of any other person, or agency
relating to such removal, care, return and
supervision.

2. To review any matter arising out of this
investigation of the care of Kim Anne Popen by the
Society in relation to the ability of the Society to
perform the powers and duties assigned to a
Children's Aid Society under The Child Welfare Act.

3. To report his findings and to make such recommendations as he may deem fit to the Minister of Community and Social Services,

and the said Judge shall have authority to engage such counsel, research and other staff and technical advisors as he deems proper at rates of remuneration and reimbursement to be approved by Management Board of Cabinet where applicable.

DATED at Toronto, this 1st day of March, 1978.

(signed) Keith C. Norton,
Minister of Community
and Social Services.

Appreciation

This Report is the result of the efforts of several persons whose assistance and support I wish to acknowledge at this time.

Counsel to the Inquiry was Nicholson D. McRae, Q.C., as he then was, and Robert G. Murray, Q.C. They were responsible for the general conduct of the Inquiry. Their professional skills, their pleasant manner and their encouragement made my task so much less arduous than it might otherwise have been.

Without in any way derogating from the importance of counsel I felt that the linchpin, as it were, of the organization of the Inquiry was Detective Tom Hill of the Ontario Provincial Police. A thorough investigation was needed to ensure that I could fulfill my duties. Detective Inspector Hill is a skilled investigator who provided that investigation. In addition to his investigative talents he had a sensitive understanding of the nature of my task. Detective Inspector Hill was also the Administrator to the Inquiry, which in itself was a demanding job requiring skill and attention to detail. He provided both. He was an ideal complement to counsel professionally and personally.

Constable L. John (Jack) Clark of the Ontario Provincial Police assisted in various aspects of the investigation and in the preparation for the public hearings. Constable Clark did all that was asked of him and did it well.

I am grateful to H. H. Graham, former Commissioner of the Ontario Provincial Police, and his successor, James L. Erskine, who permitted me to have the benefit of the services of these two officers.

Gordon Chaput was a most able registrar during the phase of the Inquiry when public hearings were held.

I have spoken of counsel to the Inquiry. Other counsel represented other interests and their attendance and participation were helpful. Without intending to offend counsel whose duties required them to appear only briefly I want particularly to thank Mrs. Rosemary J. McCully, counsel to the Ministry of Community and Social Services and Mr. Thomas B. Granger, Q.C., counsel to the Children's Aid Society of the city of Sarnia and County of Lambton. They were present throughout and were co-operative with the staff of this Inquiry. Their participation lightened my task and that of other associated with me.

I want also to thank two witnesses who were called by the Counsel to the Inquiry. The Report indicates the extent of my reliance upon the expert testimony of Dr. Robert Bates and Dr. Francis Turner. I am indebted to them for the knowledge and experience which they made available to the Inquiry. Dr. Turner was of assistance in relation to social work generally, its practices and procedures. Dr. Bates, a skilled physician dedicated to the protection and care of children, was clearly an expert in relation to the role of medical personnel generally in relation to the detection and treatment of child abuse.

I thank also those from the community, such as Mr. Robert Sharen and Mr. Raymond Wryzykowski, who attended of their own free will to testify because of their interest in the welfare of the community and its children and not because of any personal involvement in the tragic incidents of Kim's life.

During the earlier stages of the Inquiry an office was maintained in Sarnia. Mrs. Clare Ross was responsible for the operation of that office.

Later in Toronto I spent many months in offices maintained by the Ministry of the Attorney General of Ontario for use by those engaged upon tasks such as mine. I was afforded every courtesy and assistance by the personnel of that office. Miss Doris Wagg relieved Detective Inspector Hill of his duties as Administrator and accepted responsibility for proof-reading this Report. Mrs. Carroll Brooks was responsible for reading my handwritten notes, composed of a difficult collection of scribbles, lines, balloons, arrows and other symbols or

directions. She did it well and maintained a good disposition throughout. Mrs. Connie Hurley happily performed any secretarial or clerical duty requested of her.

I want also to express appreciation to the Municipal Council of the County of Lambton and the Administrator of the Court House and County Building complex in Sarnia. They provided excellent accommodations for the conduct of the many days of public hearings and assured the comfort of the public and of those directly involved upon the Inquiry.

I thank all of those whom I have mentioned and others who from time to time in various ways made a difficult duty a little easier.

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Chapter I

General Plan of Report

The initial requirements of the Ministerial Order can best be fulfilled by a review of the entire life of Kim Anne Marie Popen as it was revealed in the testimony and evidence presented to the Inquiry. For the sake of brevity I shall usually refer to the child simply as "Kim."

That will involve peripherally and briefly an examination of her antecedents and their lives up to the time of Kim's birth. As will be indicated that examination was not complete nor was it entirely satisfactory primarily because of what I perceived to be the unreliability of an important witness, Jennifer Angela Popen, mother of Kim Anne Marie Popen. However, I do believe it was sufficient for the purposes of this Report.

That review will involve an examination in some detail of various events in the life of Kim, and the involvement of various persons, institutions, authorities and organizations in those events.

The remaining requirement of the Ministerial Order will be fulfilled by a review of certain recommendations made by various witnesses who appeared before the Inquiry and by a tabulation of recommendations which would appear to flow from all of the evidence presented.

In the interest of brevity of the Report, all persons, authorities, organizations, institutions, documents, reports or the like shall be identified in accordance with the table of identification appended to the Report.

Similarly, the qualifications and experience of various witnesses, are set forth briefly in the list of all witnesses, arranged alphabetically and appended to the Report.

Schedule 2-B to the Report contains a number of extracts from The Child Welfare Act, R.S.O. 1970, Chapter 64, as it was on August 1, 1975 and as it remained until March 31, 1978, and the Regulations made thereunder.

Chapter II

Foreword

Mrs. Margaret Farina, whose participation in a review of Kim's case is described in Chapter XXVIII of the Report, is a compassionate and gentle lady. She testified as to remarks made by The Honourable Keith C. Norton, then Minister of Community and Social Services, in an opening statement to a meeting attended by representatives of children's aid societies on September 8, 1978. She said that copies of the Garber Report submitted to the Minister on June 19, 1978, were distributed and discussed at that meeting. She said that the Minister had suggested that the Report of this Inquiry should be mandatory reading for all people involved in child abuse.

Mrs. Farina said that she agreed with that statement

"because it seemed in this particular case almost every mistake you could make was made with a few exceptions and it seemed to both the Minister and [herself] that this would be a very dramatic way of learning."

Extravagant as it may appear, that comment was, unfortunately, a remarkably accurate assessment of the evidence adduced upon the Inquiry.

Anyone who attended the various sessions of this Inquiry or who read the transcripts of the evidence cannot help but be struck by a feeling of sorrow and anger or frustration.

The evidence related to the short life and the too early death of a child, Kim. During her lifetime she was the victim of abuse and neglect. She was physically abused. She did not receive the protection to which she was entitled.

Courts of Ontario have already made some determinations in connection with that abuse and neglect.

Both parents of the child were charged with a breach of The Child Welfare Act. The information, laid by a member of the Sarnia Police Force and ultimately presented to the Provincial Court (Family Division) of the County of Lambton, set forth the allegation that:

"Mr. Annals Ambrose Popen and Mrs. Jennifer Angelle (sic) Popen, 287 Devine St., Sarnia, between January 11/75 and August 31/75 at the City of Sarnia in the said County, having the custody of a child, Kim Anne Marie Popen, unlawfully did fail to protect the child, contrary to Chapter 64, Sec. 40(1) of the Child Welfare Act, Revised Statutes of Ontario."

At trial, the father, Annals Popen, entered a plea of guilty and the charge against the mother, Jennifer Popen, was withdrawn. Upon the evidence adduced upon the Inquiry it would seem that Jennifer Popen too might properly have been guilty of that offence as charged.

As a result of the events which led directly to that charge against the parents and as a result of the finding of guilt and upon the application of the Society, the Provincial Judge sitting in the Provincial Court (Family Division) of the County of Lambton, found Kim to be a child in need of protection and made the following order:

"I order

(a) that the child be made a ward of and committed to the care and custody of Children's Aid Society, City of Sarnia, County of Lambton for a period of six months commencing 25th February 1976."

While still a ward of the Society, Kim received injuries which caused her death.

Both of her parents were charged with manslaughter. During their trial the mother, Jennifer Popen, changed her plea to one of guilty. The jury

found the father, Annals Popen, to be guilty. Upon an appeal heard in June, 1981, that conviction was set aside and a new trial for Annals Popen was ordered upon that new trial held in December, 1981 he was found not guilty.

In testimony before the Inquiry, Jennifer Popen admitted that she had caused some of the injuries described in the post-mortem report of the pathologist, Dr. Girdhari L. Patodia. She denied any knowledge of other injuries described by Dr. Patodia.

In addition to being the victim of abuse and neglect by her parents or one of them, Kim was the victim of neglect by others who, for a variety of reasons, failed to provide to her the protection to which she was entitled.

Upon the evidence and submissions to the Inquiry it is my view that responsibility for that neglect lies primarily upon the Society as represented by certain of its officers and employees. They failed to provide services which would satisfy reasonable standards of professional competence required of persons in their positions.

During the Inquiry, views were expressed to the effect that the whole community, the City of Sarnia, the County of Lambton, the Province of Ontario and something vaguely called "the system", had failed the child. It is clear that others do bear some responsibility along with the Society.

Some of those others bear specific responsibility by reason of their positions as professional persons or as occupants of various offices. Others might be described as ordinary citizens without training or skills or experience to enable them to recognize indicia of child abuse and neglect.

It is apparent that while many contributed to the neglect of the child, Kim, the effect of the contribution of each of them varied from that of the contribution of each of the others. Some were errors or omissions, perhaps of a highly technical nature, which had little, if any, effect upon the result of the sum of the many contributions. Others were errors or omissions which had a great bearing upon the ultimate result.

Various departments, agencies and personnel of the Province of Ontario failed the child. Particular responsibility falls upon the Ministry of Community and Social Services and that is dealt with rather extensively in the Report.

The advice given by the Crown Attorney to members of the Sarnia Police Force as to the charges to be laid following Kim's admission to hospital on August 31, 1975, was essentially correct. Unfortunately when the matter finally came to trial on February 23, 1976, the rationale of that advice was forgotten, overlooked or ignored by the Crown Attorney, the Assistant Crown Attorney and members of the Sarnia Police Force. There were various explanations given for that error or oversight.

The matter was dealt with in haste on February 23, 1976 by the Assistant Crown Attorney who had not been fully and properly instructed as to the intricacies of the matter. Not having fully acquainted himself with the relevant provisions of The Child Welfare Act and the elements of the offence charged, the Assistant Crown Attorney misconstrued the effect that a finding of guilt pursuant to section 40 of The Child Welfare Act against one parent would have upon the finding that might be made against the other parent, the essence of the offence charged being failure to protect the child.

Even prior to the trial, the Crown Attorney's office did not accord to the case the attention and preparation which it merited because of its very serious nature, implications and intricacies.

The matter was originally placed for trial in a court which lacked jurisdiction to try it. Delay resulted.

On another occasion, the Crown Attorney's office and the Sarnia Police Force failed to secure the attendance of a medical doctor whose evidence was essential to the prosecution. Delay resulted.

In preparation for the trial, the Crown Attorney did not request or receive from the Sarnia Police Force all of the information which should have been available to the office of the Crown Attorney to

enable presentation of all appropriate evidence at the trial.

Thus, the Office of the Crown Attorney failed the child.

While the Probation Services of the Ministry of Correctional Services properly fulfilled the duties imposed upon them by the various requests and orders of the Provincial Court (Family Division) of the County of Lambton, with reference to the probation of Kim's father, Annals Popen, they failed to take full advantage of the opportunities they had to make observations within the family's home or to recognize or act upon what they did observe and particularly they did not apprise the Society of some of the developing situation which was or should have been causing them concern. Thus, they failed the child.

The Lambton Health Unit, as represented by its employees, failed to establish a proper and continuing liaison with the Society from June 1975 after learning of the allegations of abuse. Thus they failed the child.

Mr. Abdul Khattab, a social worker in the employ of St. Joseph's Hospital in Sarnia, had an inherent faith in the goodness of parents generally towards their children. He expressed that faith in respect of Kim's mother, Jennifer Popen. He appeared to lack a clear understanding of his role and his responsibility and duty as a social worker, even when specifically asked by Dr. Kunwar Singh or by a nurse on his behalf to do certain things. Thus he failed the child.

Some, such as hospital employees, doctors and nurses, relied upon others, including their professional colleagues, to fulfill the duty to report information pursuant to the provisions of section 41 of The Child Welfare Act. Thus they failed the child.

Some, such as the Sarnia Police Force, did not exercise the full power and authority given to them under The Child Welfare Act to investigate complaints and to apprehend children. In Kim's case

they left it to the Society to do. Thus they failed the child.

The apparent harshness of that last statement must be mitigated by recognition of matters dealt with more extensively elsewhere in this Report. At least one police officer very strongly stated to Mrs. Harvey his concern for Kim's welfare. Mrs. Harvey chose to make a decision which was directly contrary to that police officer's express recommendation. There were practical considerations which in my view virtually compelled the police officers to rely upon the Children's Aid Society who at all times were the public or community agency primarily responsible for the care and protection of the child.

Some, such as relatives, friends and neighbours of the family, were interested generally in Kim and her family. They were unable or unwilling to recognize or fully appreciate what was happening in that family and to Kim. They were unable or unwilling to believe that either parent could or would abuse or neglect Kim. Thus they failed the child.

That others failed Kim in any way provides no cause or excuse for the failure of the Society to fulfill its entire obligation towards Kim, whether pursuant to The Child Welfare Act or the order of the Provincial Court (Family Division) of the County of Lambton, from June 17, 1975 until her death on August 11, 1976. It would appear that if the Society, collectively, and especially those officers and employees whose roles and apparent failures are examined and discussed in this Report, had fulfilled its and their obligation to Kim she would probably still be alive.

Similarly the failure of the Society and others does not relieve the Ministry of Community and Social Services, particularly the Child Welfare Branch as it was constituted during the months of Kim's life, of criticism for its failure to fulfill its statutory duties, which failure contributed to some of the failure by the Society towards the child. That Ministry does not appear to have been a particularly effective instrument to fulfill its duties and obligations pursuant to the provisions of The Child Welfare Act and thus its duties and obligations to Kim.

As one listened to the testimony of employees of that Ministry, one could not help but form the impression that, for whatever the reason, during the period of time material to the life and death of Kim, the Ministry muddled along. It appeared to have been constantly reviewing, discussing, re-organizing, appointing task forces or the like and engaging consultants. Then the Ministry did not act effectively upon whatever came from such reviews, discussions, task forces, and consultants. Instead the Ministry would begin another round of review and discussion and re-organization.

In his submission to the Inquiry, counsel for the Society suggested that the position of that Ministry was summed up in a portion of a letter published in December, 1978 by the President of the Ontario Association of Children's Aid Societies.

The portion as read by Mr. Granger bore the sub-title "Does this sound familiar?" and continued as follows:

"A faithful reader who shall remain nameless has sent us this quotation from Petronius which seems to fit the current Ministry's situation.

'We trained hard, but every time we were beginning to form up into teams we would be re-organized and I was to learn later in life that we tend to meet any new situation by re-organizing and a wonderful method it can be for creating the illusion of progress while producing inefficiency and demoralization.'"

Another version of that quotation which I have seen places the word "confusion" before the words "inefficiency and demoralization." I think "confusion" too is an appropriate word to apply to that Ministry's position at least during Kim's lifetime.

The impression given to me by employees of the Ministry who testified was that at all material times, the Ministry was searching for an ideal organization. However commendable that search may have been, the Ministry failed properly and fully to perform its duties and obligations. The Ministry

failed to use or continue to use what it had, however imperfect that may have been. In its search, the Ministry chose to discontinue some of its functions in the child welfare field or allowed some of them to lapse or disappear by attrition. As a result, a void existed for a considerable period of time, and the Society operated without effective supervision and inspection by the Ministry during all or most of Kim's life.

The Ministry was caught in the financial restraints imposed by the Government of Ontario from 1975 forward. The Ministry lacked the personnel or other resources to perform certain things it had undertaken or which it was required to do to fulfill its statutory duties. That inability or failure by the Ministry clearly demonstrates the futility of The Honourable James Taylor, Q.C., the then Minister of Community and Social Services, directing the Society in effect to continue to do as good a job as it had been doing, but do it with proportionately less money. The Ministry itself appeared unable to achieve that goal.

On the evidence it would seem that funding of the Society's operations by the Ministry or otherwise was not a directly contributing factor to the failure of the Society to fulfill its duties and obligations to Kim. However, there appeared to be in the Society an all-pervasive concern with the financial aspects of its operation. In the years which are material to the Inquiry the budgets as submitted by the Society to the Ministry of Community and Social Services were not initially approved by the Minister. It would seem that those concerns with financial matters and difficulties with budgets in part created a state of poor morale among the Society's staff. Mr. William John Lovatt, Local Director of the Society, devoted a large part of his efforts in relation to such matters. It would appear that as a result of that he was not as fully involved as he might otherwise have been in that part of the Society's operations related to the delivery of services to the community including services to protect Kim.

The entire endeavour of this Inquiry cannot help Kim. But perhaps her terrible suffering and death, the events which led to the Inquiry and the

conduct of the Inquiry will cause us to do some of what we as a human and humane society might do to reduce the risk of any other child suffering and dying as she did.

On the evidence it would appear that the Ministry of Community and Social Services has now effected certain changes and has allocated substantial sums of money, hopefully to enable it more fully and effectively to perform its duties and obligations to all children in Ontario. One can only hope that the changes are real and that they do not fall into the same category as the earlier reorganizations and reviews in respect of which the quotation from Petronius seems most apt.

It is perhaps naive to believe that we can entirely prevent the abuse or neglect of children. But that should be the ultimate goal and nothing should stop us from trying to reach it.

It is likewise naive to believe that unlimited resources of funds and personnel are available to enable us to reach that goal however laudable it may be. We can only hope that those responsible for the allocation of our total resources to meet the multitude of claims upon them will assign a very high priority to the protection of our children who, in the words of Dr. Robert Bates in his testimony to the Inquiry, are "our most precious commodity."

Chapter III

Kim's Antecedents

Kim was a child of the marriage of Annals Popen and Jennifer Popen. She was born at Sarnia, Ontario, on January 11, 1975.

The only evidence presented to the Inquiry as to the family background of Jennifer Popen and Annals Popen came from them either directly in their testimony or indirectly in the testimony of others as to what they had been told by one or the other of Annals Popen and Jennifer Popen. Like others before me to whom they had given information as to their backgrounds, I found the evidence to be of little value, particularly as it related to Jennifer Popen's family and life before her marriage to Annals Popen.

I determined, however, that the purposes of the Inquiry did not require me to direct further investigations to resolve the inconsistencies and contradictions revealed in that evidence.

As to Jennifer Popen, I am prepared to accept that she was born in Jamaica. In one area of her testimony she said her date of birth was September 7, 1959, and that she had been thirteen years old at the date of her marriage. Later she said she was not sure of the year of her birth although she said her birth certificate shows it to be 1959.

Medical reports and records produced upon the Inquiry, all presumably based on information given by her to the various persons preparing those reports and records ascribed a variety of ages to her.

Dr. Samir F. Jumeau, the family doctor, testified that on records of her admission to hospital her date of birth was shown as September 7, 1957.

Dr. Singh, who examined Kim on various occasions, wrote a report dated August 31, 1975, in which he stated Jennifer Popen's age then to be 19.

Dr. James J. Curtin, a psychiatrist who examined or interviewed both Annals Popen and Jennifer Popen at various times, wrote a report dated March 19, 1976, in which he stated Jennifer Popen's age at that time to be 18.

The pre-sentence report dated March 29, 1976, to which the last mentioned report is attached, prepared by George Brouwer, a Probation Officer, in connection with the sentencing of Annals Popen following his having been found guilty in the Provincial Court (Family Division) of the County of Lambton, upon the charge under The Child Welfare Act, states that Jennifer Popen was fifteen when she met Annals Popen in 1972 and when she married him in 1973.

Dr. Curtin in a subsequent report dated September 26, 1977 stated Jennifer Popen's age then to be eighteen upon the basis of her birth certificate which he said showed her date of birth to be September 7, 1959.

A pre-sentence report dated December 19, 1977 prepared by Mr. Brouwer, in connection with the sentencing of Jennifer Popen following her having been found guilty of manslaughter in connection with Kim's death, states that

"Jennifer Angela Popen, nee Mair, was born in Kingston, Jamaica on September 7, 1959, according to her birth certificate; the year of birth appears to have been altered on this certificate to read 1957. Her year of birth on her Jamaican passport is given as 1957."

That same pre-sentence report also contains the following statement:

"For the preparation of this report we have experienced difficulties in gathering factual information on the offender's background. There have been doubtful statements, changed statements by the

offender, and other conflicting stories which could not always be verified."

Further as to Jennifer Popen's age, Annals Popen testified that he understood her to have been 16 years of age at the time of their marriage. He said he was told this by a woman whom he described as Jennifer Popen's 'mother', but who probably was the aunt or foster mother with whose family she had apparently lived from a very early age.

Some of Jennifer Popen's evidence tended to confirm that that was Annals Popen's understanding and the basis for that understanding even though she suggested that the aunt or foster mother had not known Jennifer Popen's age.

A report dated December 12, 1977, prepared by Dr. Selwyn M. Smith, a psychiatrist, who had examined Jennifer Popen, which report is attached to the pre-sentence report dated December 19, 1977, states her date of birth to have been September 7, 1959. That report then in reference to the marriage states:

"Her aunt also presented a falsified birth certificate which stated that she was 16 years of age."

I have made this review of this area of the evidence not because I felt it necessary to determine Jennifer Popen's correct age, but simply to demonstrate the difficulty one has in trying to ascribe credibility to her evidence even as it related to her age.

I am prepared to accept as correct that she was, by the standards of Canadian society at least, quite young when she married Annals Popen and when Kim was born.

The same difficulty applies to any attempt to ascertain how Jennifer Popen lived in Jamaica prior to her marriage to Annals Popen. The only evidence really came from her directly or from others to whom she had made various statements. That evidence is fraught with contradictions, inconsistencies and uncertainties.

Jennifer Popen's evidence was that, when she was six years old, she lost her parents. I believe she used the word "lost" in the sense that they deserted or abandoned her or placed her with a foster family. She said she lived with that foster family which she said included a woman whom she described as being her aunt.

At one point Jennifer Popen said she thought this family was in some way related to Annals Popen. At another point she said she really did not think there was any such relationship, but if there were it would be a distant one.

Jennifer Popen testified that the foster family, including some of her siblings, was made up of about thirteen persons. She said that from about the age of eight she was abused physically and sexually by her foster parents and others in the foster family.

Jennifer Popen testified that she had given birth to a child prior to her marriage to Annals Popen. Her evidence places her age at the time of such birth as, variously, "over eleven" and "going on thirteen". Her evidence was that she had given that child to her grandmother and that the child was still living in Jamaica. In her evidence on September 27, 1978 when asked how old that child was then, her reply was "I'd say seven". That would place the date of birth of that child in late 1970 or in 1971. I am not prepared to rely upon Jennifer Popen's vague evidence.

It must also be noted that there was other evidence, as that of Mrs. Shirley Lo and Mr. Harold Carter, of the Society, that Jennifer Popen had said that the child born to her in Jamaica had died. In her evidence upon the Inquiry, Jennifer Popen acknowledged that she may have told Mr. Carter that her child in Jamaica had died and, that if she did, she had lied about it.

Again I have cursorily reviewed these segments of the evidence not so much because of any need to establish definitely the circumstances of Jennifer Popen's life prior to her marriage to Annals Popen, but because it appears from the evidence of others upon the Inquiry that the life experience of a

person has considerable influence upon that person's behaviour as a parent, perhaps especially insofar as abusive acts towards his or her children are concerned.

In her testimony, Jennifer Popen spoke of herself as having an uncontrollable temper. At one point in her testimony, she said that she had not confided in anyone nor had she received any medical or psychiatric treatment in respect of her temper prior to Kim's death. She said she had seen doctors in Jamaica, but she could not remember the reason for such visits. She said she was not sure if they related to her uncontrollable temper. She said she had not consulted anyone in Canada about her temper until after Kim's death.

In her testimony she said that after Kim had been returned to her home, and I presume she meant the return on May 27, 1976, she had seen Dr. Stephen Gamula about her temper and the infliction of injury to Kim and had received some medication to help her control her temper. She said she took the pills as prescribed.

However, Dr. Curtin in the report attached to the pre-sentence report prepared by Mr. Brouwer in March 1976, wrote of having interviewed Jennifer Popen on October 22, 1975 following her referral to him by Dr. Gamula. That referral may very well have been in connection with Jennifer Popen's temper and its manifestation.

In her testimony, Jennifer Popen said that it was possible that she had injured Kim during a temper tantrum when she did not know what she was doing, but she cast doubt upon the likelihood of that possibility by saying that she always knew when she hit or slapped Kim.

The pre-sentence report prepared for the assistance of the learned County Court Judge with reference to the sentencing of Jennifer Popen following her having been found guilty of manslaughter in connection with Kim's death contained a reference to Jennifer Popen having spoken of the death by suicide of one of her sisters and two of her step-sisters. When asked about that during the Inquiry her response was

"Well, that's news, I am not sure of that, if that's the way it was done. It could, you know, could have been accident as far as I am concerned."

but she did go on to say that she had told the Probation Officer who prepared the pre-sentence report that two of the girls or women had taken their own lives, but she was not sure whether the third had died by accident or suicide. She claimed not to know the ages of those girls or women or if they were living at home at the times of their deaths. Her evidence as to the ages of the sisters in relation to her age and the dates of their deaths in relation to the date of her marriage to Annals Popen and the date of her immigration to Canada is also vague and uncertain.

Again I do not feel obliged to make any finding as to the truth or otherwise of any of that evidence. I think it does become of interest in considering the actions of others in relation to the subject matter of the Inquiry and their failure to seek to ascertain some of the truth as to Jennifer Popen's background in their efforts to learn the source or cause of Kim's serious injuries and to whom their particular attention should be directed.

Jennifer Popen testified that she did not have a great deal of difficulty in school and had advanced to Grade Nine and was going to Grade Ten at the same time.

The life of Annals Popen prior to his marriage to Jennifer Popen appears to have been quite uneventful. He was born in Jamaica on September 24, 1939 and received a Grade Eight education there. He came to Canada in 1957. He has been employed in the laundry at St. Joseph's Hospital in Sarnia and in the construction industry.

In 1972, Annals Popen returned to Jamaica. On that visit he met Jennifer Popen. Jennifer Popen's evidence was that she had known him for about six months prior to their marriage. She said she knew him quite well and liked him, but that marriage to him was not really her choice and that she had married him because her "aunt" told her to.

Annals and Jennifer Popen were married in Jamaica in January, 1973. Jennifer Popen's evidence was that the marriage was solemnized in a church on January 13, 1973.

Jennifer Popen testified that after their marriage she came to Canada as a visitor and lived with Annals Popen in Sarnia for about six months or more. She said he was kind to her and it would seem that nothing of any significance occurred during that six month visit. She did testify that at that time, she did not know if she wanted to remain in Canada or not. She said she then returned to live in Jamaica for two or three months after which she came to Canada in 1974 to live with Annals Popen. I gather Annals Popen had remained in Canada during Jennifer Popen's return to Jamaica.

Another example of the difficulty one has in considering the evidence of Jennifer Popen arises from her answer as to whether or not Annals Popen was working during the period of her visit of six months or so to live with him in Canada. Her answer was "I think he was -- I don't remember."

There does not appear to have been any particularly striking feature in the life of Jennifer Popen and Annals Popen together in Sarnia prior to Kim's birth. Jennifer Popen did testify that Annals Popen had a problem with alcohol, but I gained the impression that that, if it was in fact a problem, did not arise until after Kim's birth.

Neither Jennifer Popen nor Annals Popen testified as to the effect, if any, upon their life together of the situation recorded by Mr. Carter as his personal observation that Annals Popen had "numerous extended families residing constantly and always within his own location" whereas Jennifer Popen, "on the other hand, present[ed] a rather isolated person," who had stated she was not liked by her husband's family or the extended families by the name of Kameka, who, according to Mr. Carter were numerous in the area of Sarnia.

From my observation and assessment of Jennifer Popen and Annals Popen as they testified upon the Inquiry and upon the impression I gained of them from the testimony of other witnesses as to

their observations and assessments of Jennifer Popen and Annals Popen as individuals and in their marriage and as parents, with particular reference to the matters before this Inquiry, I concluded that Jennifer Popen was the dominant partner in the marriage and in the care of Kim.

I think Annals Popen was a passive, docile, almost plodding partner, yet he must have known, at least to some extent, that his wife was abusing Kim. Whether from fear of losing his wife or alienating her, he did nothing to protect Kim. In fact, he appears to have done everything in his power to assist Jennifer Popen in covering up her abusive treatment of the baby.

Dr. Bates testified that in a family situation where one parent has "the potential to abuse" and the other has a passive personality, abuse may well occur. The Popen family fitted this pattern completely. Annals Popen's conduct was a tragic instance of passivity and wilful blindness.

Jennifer Popen, despite her youth and despite any psychiatric, psychological, mental or emotional disorder from which she may have suffered at any time, including the times of her attendances to testify upon the Inquiry, appeared to me to be a person quite capable of creating, relating and maintaining elaborate stories and deceptions. She had a further facility of amending any story if she felt she had been or was about to be caught up in a lie. I feel that she demonstrated or admitted that capability and that facility as she testified. At other times it seemed that when she knew she was found out she brazenly admitted that she had lied.

Jennifer Popen seemed to have a further facility almost to toy or play with or tease various counsel and myself upon the Inquiry. It seemed that on several occasions she would ask for what I felt was unnecessary clarification of some detail or part of a question that was put to her, seemingly indicating that she was prepared to answer, but then when the question was rephrased or clarified either she announced an inability to remember the subject matter of the question or she adopted some similar device to avoid answering the question. The professed inability to remember was sometimes employed by her without

any adornment. In the end her cloak of professed failure to remember became transparent.

On other occasions Jennifer Popen's answers were vague, confusing or unintelligible. Sometimes two or more of those adjectives could be applied to one answer however short it may have been.

Jennifer Popen seemed to me to have an ability to be quite intuitive or perceptive as to how certain events would develop. For example, if she was honest in this area of her testimony, and I am not prepared to find that she was, she seems to have been uncannily accurate in her assessment of the time at which the Society would return Kim to her home.

Jennifer Popen seemed also to have an ability to deceive, exploit or manipulate others to her own advantage. These were persons who appeared to me by their very nature to be honest, trusting and decent persons who wanted to be helpful to Kim and her parents and who wanted to believe that others, particularly Jennifer Popen, were honest, good and decent people guilty of no crime or offence. Mrs. Catherine Rose Maughan, a volunteer worker with the Probation Services of The Ministry of Correctional Services, was one such person.

All in all I found Jennifer Popen to be less than honest. She was a devious and unreliable witness.

There was some suggestion in the evidence upon the Inquiry to suggest that Annals Popen had a problem with alcohol. I am not at all satisfied that that is so, nor am I satisfied that if he did have any such problem it had any bearing upon Kim's injuries and death.

Jennifer Popen testified that Annals Popen was drinking, presumably to excess, from the date of Kim's birth in January, 1975 until August, 1975 when the Society obtained custody of Kim following her admission to hospital with severe injuries. She said he drank mostly on weekends and did not drink much during the week because he had to go to work. She said that on occasion he became so intoxicated that he could not on the next day remember what had occurred during the period of his drinking.

Annals Popen, in his evidence, denied that he was a heavy drinker, but he did seem to acknowledge that he did drink on weekends and sometimes to the extent that he could not remember what he had done while drinking. That evidence is consistent with what was presented to the Provincial Court (Family Division) of the County of Lambton, in early 1976 during the trial of the charge under The Child Welfare Act. But, as I have indicated earlier, I would be inclined to be doubtful of it because of my assessment of Annals Popen as a man easily persuaded or anxious to accept such suggestions from his wife and because of Jennifer Popen's evidence as to the episode involving the thrown slipper which seemed to loom large in Annals Popen's admission of guilt upon that charge.

There was no evidence that even that suggested problem with alcohol continued beyond that period of Kim's being in hospital in September, 1975. Apparently Annals Popen decided then to stop drinking and, perhaps with the assistance and encouragement of friends such as Douglas Vanderberghe, was able to persist in that decision.

In her evidence Jennifer Popen acknowledged that she had told "stories" to the doctors who were attending Kim, that is "stories" as to how Kim had suffered the injuries. Similarly she acknowledged that she was less than honest with Annals Popen when she described to him the way in which he had, according to her "story" to him, injured Kim while he was under the influence of alcohol and had thrown a slipper which struck Kim.

Jennifer Popen also acknowledged that, in discussions with the Society's personnel and others, she had denied that she inflicted any injury upon Kim, injuries which in her evidence upon the Inquiry she acknowledged were inflicted by her.

Those then in very general terms were the immediate antecedents of Kim as I found them to be upon the Inquiry.

Chapter IV

The Life of Kim

This Chapter of the Report describes in very general terms the life of Kim and a number of significant events therein. The following Chapters shall deal in some detail with various periods of time in Kim's life and the events in those periods and shortly thereafter.

Kim was born in Sarnia, Ontario, on January 11, 1975. Her parents were Annals Popen and Jennifer Popen.

On March 22, 1975, at the age of two months, Kim was admitted to St. Joseph's Hospital, Sarnia with a transverse fracture of the upper left humerus with displacement. She was also found to be suffering from an infection of the upper respiratory tract.

Dr. Malcolm D. Thorp was the physician who admitted Kim to hospital. Dr. Brian Edward McCrudden was the radiologist who took X-rays and prepared a report. Hospital records indicate that Drs. William A. Woods, S.S. Lota and S.F. Jumeau had responsibility as attending physicians. Dr. Singh was the pediatrician who was consulted and who prepared a report indicating his suspicion that Kim was a victim of child abuse.

Thus as early as March 22, 1975, when Kim was two months old, a well qualified person with professional training and experience had expressed a suspicion of child abuse and from that day forward that recorded expression of suspicion was available to all who were responsible for the care and protection of Kim, especially the Society to whom a report of suspected abuse of Kim was made on June 17, 1975, in whose care and custody Kim was placed by her parents on August 31, 1975 and in whose care and custody she remained by virtue of an order of the

Provincial Court (Family Division) of the County of Lambton, until her death.

Dr. Singh directed that the social worker employed by the hospital investigate the matter. That social worker was Mr. Khattab.

On April 3, 1975, Kim was discharged from hospital. Dr. Jumean signed the discharge document as attending physician.

On April 28, 1975, at the age of three months, less than four weeks after her prior discharge from hospital, Kim was again admitted to St. Joseph's Hospital with a provisional diagnosis of dehydration and high temperature. Dr. Jumean was the attending physician. There was a primary diagnosis of bronchitis and a secondary diagnosis of diaper rash. The case history, signed by Dr. Jumean, says "The child has been admitted with upper respiratory infection for further investigation and treatment."

On May 2, 1975 Kim was again discharged from hospital. Dr. Jumean signed the discharge document.

At some time before August 31, 1975 when Kim was less than eight months old, perhaps in June or July or August, 1975, Kim and her mother were seen in a shopping mall in Sarnia by Mrs. Betty Louise Hewitt. Mrs. Hewitt is a registered nurse who was on duty, as Acting Head Nurse, in the children's ward of St. Joseph's Hospital while Kim was in the ward in March and April, 1975. She recognized the child and mother. She observed that Kim's face was bruised and her eyes blackened.

In June, 1975, Dr. Jumean, physician to the Popen family, telephoned the Sarnia Police Force to report his suspicion that Kim had been abused. As I will discuss in greater detail in later portions of the Report, I am satisfied that on June 6, 1975, Dr. Jumean had examined Kim at the request of a relative of the Popen family, who was concerned for her well-being and who feared she had been mistreated and so brought her to Dr. Jumean's office. I believe that it was Mrs. Fay Popen who brought Kim to Dr. Jumean. Dr. Jumean testified that he recorded the visit as follows:

"Baby - multiple bruising of the arm, the face and the lower left region" and "possible battered syndrome."

Dr. Jumeau testified that he telephoned the police that day. The evidence of Staff Sergeant James Allan, of the Sarnia Police Force, was that the telephone call was received by the police on June 16, 1975. In all the circumstances, I prefer the evidence of Staff Sergeant Allan to that of Dr. Jumeau as to the date on which the call was made to the Sarnia Police Force.

On June 17, 1975, Police Constable Christopher Gander, of the Sarnia Police Force, attended at the Society's office. He spoke to Mrs. Audrey Dick, an intake worker, to inform the Society that the Sarnia Police Force had received a report of suspected abuse of Kim.

Mrs. Dick promptly arranged for Mrs. Sandra Saul, another intake worker, and Mrs. Winona Hoad, a volunteer worker with the Society, who was also a qualified nurse, to accompany Police Constable Gander to visit the Popen home to investigate the report.

On June 17, 1975, Mesdames Saul and Hoad and Police Constable Gander located Kim in the care of a relative, the same relative whose comments had led Dr. Jumeau to telephone the police.

When Kim was examined on June 17, 1975, by the Society's workers, there was little, if any, appearance of any injury or abuse to her. However, the circumstances preceding and surrounding the examination and the immediately subsequent conduct of Kim's parents were such as to cause Mrs. Saul to report directly and immediately to her supervisor in the Society, Mrs. Mabel Harvey, Supervisor of the Family Services Department. Mrs. Harvey accepted Mrs. Saul's recommendation that the whole matter of Kim's care merited prompt and continuing attention by the Society. Mrs. Harvey assumed direct personal responsibility for the further processing of the matter within the Society and assignment of the responsibility to a long term worker.

It is clear that Mrs. Harvey did not cause a file to be opened in the Society with reference to

Kim, nor did she assign responsibility for the management of the case to any of the Society's workers at that time.

There is evidence to suggest that there were telephone conversations between members of the Sarnia Police Force and the Society's workers, with reference to Kim, between June 17 and August 25, 1975. That evidence is not of much assistance because it is vague as to the parties to and the content of those conversations.

While testifying upon the Inquiry, Dr. Jumeau produced from his records a card upon which he recorded various attendances upon or in relation to Kim. The notes were virtually indecipherable, even by Dr. Jumeau. It may have been lack of clarity of those notes which led Dr. Jumeau to testify initially that he saw Kim on June 6, 1975 and that day telephoned the Sarnia Police Force. The notes make no mention of any telephone call and do seem to me to indicate the visit was on June 6, but they might indicate it was on June 16. As I state later in the Report I am satisfied that the visit was on June 6, 1975. The notes indicate another visit on June 19, 1975. Dr. Jumeau said that visit was by Jennifer Popen. He said that visit resulted from the earlier visit when he saw Kim. He said he telephoned Jennifer Popen and asked her to come to his office. He said he wanted "to find out what's going on."

There is also some evidence to the effect that on August 29, 1975, Mrs. Harvey discovered that she had not had a file opened and had not assigned the case to any of the Society's workers. I do not recall any evidence to suggest any incident which would have brought the matter to Mrs. Harvey's attention or mind on August 29, 1975. August 29, 1975 was the Friday preceding the Labour Day weekend. It was the last normal working day for the Society's staff before the long weekend. If Mrs. Harvey did make that discovery on August 29, 1975, it was indeed an event of surprising coincidence.

The coincidence arises because on Sunday, August 31, 1975, Kim, when eight months old, was again admitted to St. Joseph's Hospital as a patient.

Upon that admission she was found to be suffering from bruises to various limbs and other parts of her body. An X-ray taken in connection with that admission revealed a recent fracture of the lower end of Kim's left humerus within the elbow joint in addition to the healing of an earlier mid-shaft fracture of the same bone. Another concurrent X-ray revealed healing fractures of two ribs. The medical evidence was that those fractures of the ribs had occurred three or four weeks prior to the taking of the X-rays on September 1, 1975.

In his report following his examination of Kim upon that admission to hospital Dr. Singh expressed and recorded a diagnosis of "Battered child syndrome."

Dr. Singh referred the matter to Mr. Khattab, the hospital social worker, for investigation.

The Society and the Sarnia Police Force were informed of Kim's admission to hospital. Mrs. Dick of the Society and police officers attended at the hospital on August 31, 1975.

On August 31, 1975, Kim's parents signed a form of agreement or consent prepared by Mrs. Dick placing Kim in the care and custody of the Society for one month.

At about the same time a file on Kim's case was opened in the Society. Responsibility for the handling of the case and file was assigned to Mr. Carter.

On September 5, 1975 Kim was discharged from hospital and into the care of the Society pursuant to the agreement or consent signed by her parents on August 31, 1975. The Society placed Kim with foster parents.

At about that time the Society prepared an application to the Provincial Court (Family Division) of the County of Lambton seeking an order declaring Kim to be a child in need of protection and granting wardship of Kim to the Society. That application was made pursuant to The Child Welfare Act.

On October 16, 1975, Constable Barry Wyville of the Sarnia Police Force laid an information against both Annals Popen and Jennifer Popen alleging that they did fail to protect Kim in contravention of The Child Welfare Act. That information was originally presented in the Provincial Court (Criminal Division) of the County of Lambton. It was later determined that that Court did not have jurisdiction in the matter and the information was then presented in the Provincial Court (Family Division) of the County of Lambton.

After some lengthy adjournments the application of the Society and the prosecution of Kim's parents under The Child Welfare Act were finalized in February and March, 1976.

In February, 1976, Police Constable Wyville and Police Constable Paul Charlton of the Sarnia Police Force visited the Society's offices to discuss the matter. There was discussion of the plea of guilty by Annals Popen in respect of the charge under section 40 of The Child Welfare Act and of the withdrawal of that charge against Jennifer Popen.

Mr. Carter of the Society testified that he was concerned as to the effect of that plea and withdrawal upon the application of the Society for wardship of Kim. The police officers were concerned about the suggestion that in all the circumstances Kim might be returned to her parents. As a result the two police officers, Mr. Carter and Mrs. Mary I. Kirby, another of the Society's workers, spoke with Mrs. Harvey and expressed great concern for Kim's safety if that were to occur.

Mrs. Harvey's response to that concern was that Kim was going home. Mrs. Harvey's response was made even after Police Constable Wyville expressed the opinion, eerily prophetic in the result, that if Kim were returned to her parents she would be in her grave in three months. Kim died on August 11, 1976 less than three months after her return home on May 27, 1976.

On February 23, 1976, Annals Popen, who had earlier pleaded not guilty, entered a plea of guilty to the charge against him under section 40 of the The Child Welfare Act. He was remanded to March 29, 1976

for sentence. A pre-sentence report was ordered. The similar charge against Jennifer Popen, who had pleaded not guilty, was withdrawn. Mr. Edward Hibberd, Assistant Crown Attorney for the County of Lambton, appeared on behalf of the Crown and Mr. William F. Higgins appeared on behalf of both Mr. and Mrs. Popen. Mrs. Harvey was present on behalf of the Society.

On February 25, 1976, the application brought by the Society under The Child Welfare Act was heard. An order was made finding Kim to be a child in need of protection. Wardship of Kim was granted to the Society for a period of six months. The application was heard by His Honour Judge Q. L. Nighswander who had heard the prosecution of the parents under section 40 of the The Child Welfare Act on February 23, 1976. Evidence presented upon that prosecution formed part of the evidence upon the Society's application.

The application was presented by Mrs. Harvey on behalf of the Society. The parents were represented by Mr. Higgins and Mr. Ian Harvey of his office. The material relied upon by Mrs. Harvey in her presentation had been collected and prepared by Mr. Carter to whom Kim's file, I find as a fact, had been assigned effectively in September, 1975. The files of the Society would seem to indicate an earlier assignment of the case to him -- perhaps as early as June 19, 1975.

On February 25, 1976, after the conclusion of the hearing of the Society's application for wardship Mrs. Harvey orally informed Mr. Carter that she was relieving him of responsibility for management of Kim's case and that she was assigning responsibility for such management to Mrs. Lo.

On March 29, 1976, following his conviction on February 23, 1976, Annals Popen was placed on probation for a period of one year on various terms. The pre-sentence report presented to the Court was accompanied by a report from Dr. Curtin, who had interviewed Annals Popen on three occasions. Because of my view of the relationship between Annals Popen and Jennifer Popen in their marriage it seems to me to have been a significant fact that Jennifer Popen

was present with Annals Popen at all three of those interviews.

The pre-sentence report was prepared by Mr. George Brouwer, who was assigned to supervise Annals Popen's probation. In that supervision Mr. Brouwer was assisted by Mrs. Maughan.

Mr. Brouwer assigned duties, particularly the duty to visit the Popen home, to Mrs. Maughan. Thus Mrs. Maughan was in that home on various occasions between March 30, 1976 and Kim's death on August 11, 1976. She became aware of some dissatisfaction expressed by Jennifer Popen as to the manner in which Mrs. Lo, of the Society, was performing her duties or functions in relation to Kim and her parents.

About May 7, 1976 a meeting of some of the Society's personnel was convened to determine when the decision, already made and announced by Mrs. Harvey, to return Kim to her parents was to be implemented. The only point at issue was whether the return of Kim to her parents should be effected before or after the birth of another child to Jennifer Popen, which birth was expected to occur in July, 1976. There was no discussion as to whether the basic decision to return Kim to her parents was a correct or appropriate decision. As a result of that meeting it was decided that Kim would be returned to her parents on May 27, 1976, well before the anticipated birth of the next child.

In the earlier stages of the Society's wardship of Kim, Annals Popen and Jennifer Popen had been allowed to visit with Kim at the Society's offices. In April, 1976, in preparation for Kim's return home, Kim was taken to visit her parents in their home, but those visits apparently led to some problems with Kim in the foster home. As a result, those home visits were discontinued about the end of April, 1976.

On May 27, 1976, Kim was returned to her parents' home.

Mrs. Lo continued to visit the Popen home after May 27, 1976. She made several visits there

between May 27, 1976 and August 11, 1976, the date of Kim's death.

On July 6, 1976, Jennifer Popen gave birth to another child, a son, Karie. Jennifer Popen returned to the family home with Karie a week later.

As a result of Karie's birth The Lambton Health Unit again became involved with the Popen family. Mrs. Elizabeth Kuly, a registered nurse with The Lambton Health Unit, visited the family's home on August 10, 1976 in connection with the care of the new baby.

Mrs. Lo was apparently favourably impressed by developments within the Popen household, particularly, it would seem, as they related to Kim following her return home on May 27, 1976.

On July 23, 1976, Mrs. Lo advised Jennifer Popen that the Society would not seek any extension of the six month term of wardship of Kim which had been granted on February 25, 1976. Mrs. Lo further advised Jennifer Popen that the Society would not even seek an order to permit the Society to supervise Kim's care in her home. Apparently Mrs. Lo felt the Society was prepared to permit the order of wardship simply to expire by mere effluxion of time on August 24, 1976.

On July 26, 1976, just three days later, Mrs. Lo became concerned about the situation in the Popen household. She consulted Mrs. Harvey. A decision was made that the Society would apply to the Court for an order under The Child Welfare Act that Kim remain under the supervision of the Society.

Mrs. Lo advised Jennifer Popen of that decision in the evening of July 26, 1976 and she advised Annals Popen of it the next day. Mrs. Lo delivered to each parent a notice that the application would be heard in the Provincial Court (Family Division) of the County of Lambton, on August 4, 1976.

Mrs. Lo arranged with the parents that it was not necessary for them to attend Court on August 4, 1976 as the Society would be asking that the matter be adjourned and that she would advise them of

the date to which hearing of the application would be adjourned.

On August 4, 1976, Mrs. Lo visited the Popen home for the last time prior to Kim's death and advised Jennifer Popen that the Society's application for an order for the Society's supervision of Kim in her home would be heard on September 13, 1976.

On August 8, 1976, Mrs. Maughan visited the Popen home for the last time prior to Kim's death.

Kim died on August 11, 1976. She was dead when Jennifer Popen brought her to Sarnia General Hospital. She had suffered a variety of injuries which are described in detail by Dr. Patodia in his report of the post-mortem examination he made on August 12, 1976 pursuant to the direction of Coroner Dr. R.D. MacKinlay.

On September 18, 1976, Jennifer Popen and Annals Popen were arrested. Both were charged with manslaughter contrary to section 217 of the Criminal Code of Canada. The preliminary hearing was begun on June 15, 1977, was continued on June 16, 1977 and was completed on August 11, 1977. Both Jennifer Popen and Annals Popen were committed for trial by a court composed of a judge and jury.

That trial began on November 29, 1977 in the Court of General Sessions of the Peace at Sarnia. Both Jennifer Popen and Annals Popen pleaded not guilty. On December 5, 1977, during the trial Jennifer Popen changed her plea to guilty. On December 9, 1977 the jury found Annals Popen guilty.

Both were remanded for sentence and a pre-sentence report was ordered. On December 21, 1977, Jennifer Popen was sentenced to imprisonment for a term of seven years and Annals Popen was sentenced to imprisonment for a term of one year.

In June, 1981 the appeal of Annals Popen from his conviction was heard and allowed. The conviction was set aside and a new trial was ordered.

In December, 1981 Annals Popen appeared for that new trial in the Court of General Sessions of the Peace at Sarnia. At the conclusion of the

presentation of evidence tendered by the Crown Attorney and upon the motion of counsel for Annals Popen, His Honour Judge Chester Misener directed the jury to return a verdict of "Not Guilty." The jury did return such a verdict. Annals Popen was discharged.

Chapter V

Kim's Admission to Hospital on March 22, 1975

This is the first recorded incident of injury to Kim. It is also the first time at which anyone expressed the possibility that Kim was a victim of abuse and a battered baby.

Following her release from hospital shortly after her birth in January, 1975, Dr. Jumean saw Kim on February 6, 1975. She was well. There was nothing unusual noted by Dr. Jumean.

In her testimony upon this Inquiry, Jennifer Popen acknowledged that she had caused all of the injuries to Kim noted in this section. I am prepared to accept that acknowledgement as being true.

In later areas of her testimony upon the Inquiry, she asserted that these injuries were "an accident." She said that Kim had fallen from her chair. I do not accept that later testimony as being the truth.

Dr. Thorp was in attendance in the emergency department at the hospital when Jennifer Popen brought Kim to the hospital. An Emergency Entrance Report was prepared and on March 23, 1975, Dr. Thorp prepared and signed a "History Report."

These documents indicate that at that time, Jennifer Popen reported to Dr. Thorp that she had found only that day that Kim cried when her left arm, which Dr. Thorp said seemed to be "flail", was touched. They do not indicate that Jennifer Popen gave any report of an accident involving Kim.

Dr. Thorp carefully examined Kim for bruises. He found only two small very minor old bruises on the lower left chin. I find it interesting that the history prepared by Dr. Thorp then continues as follows,

"There was no break in the skin, no signs of cigarette burns, etc."

It seems clear to me that Dr. Thorp had some concern as to the welfare of Kim and the possibility that she had been abused. If he did not have such concern then there would appear to be no reason for him to have made reference to "no signs of cigarette burns."

The diagnosis was that Kim's left humerus was fractured. An oblique fracture was shown on X-ray.

Dr. Thorp testified that he questioned Jennifer Popen and "[got] two or three different stories inside a few minutes." He said that by reason of Kim's age and development and the type of injury the matter was "extremely suspicious." So he had inquired as to whether Kim had fallen or had been lifted or grabbed by someone. The portion of the Emergency Entrance Report signed by Dr. Thorp records "no history fall." He testified that Jennifer Popen gave conflicting stories as to where Kim slept in a proper crib or in a dresser drawer used as a crib, and it had fallen. He continued

"All sorts of stories, you just couldn't follow it so fast, she talked fast and there was different stories, she was jabbering away and nervous, apprehensive and so on."

The history prepared by Dr. Thorp made reference to some concern expressed by Mrs. Hewitt, Head Nurse, that Kim seemed to resent having her legs lifted. So X-rays of the spine and femurs were ordered.

To use his own expression, Dr. Thorp was merely "covering that particular day" for Dr. Jumean. He said Dr. Lota was Dr. Jumean's "locum tenens." So he informed Dr. Lota of Kim's admission to hospital.

The History Report bears a notation to indicate that a copy of it was prepared for Dr. Jumean. Presumably that copy was delivered to him or his office.

Dr. Singh was requested to examine Kim. He said he was called by Dr. Thorp. The consultation form dated March 25, 1975 appears to be signed by Dr. Lota as the attending doctor. Dr. Singh was aware that Dr. Jumean was the family doctor, but was on vacation and Dr. Thorp was "covering" for him.

In the portion of the consultation form above the signature of Dr. Lota, in part, the reason for the request for consultation is given as "? Batter Baby syndrome." I take that to mean there was some question or suspicion in the mind of the writer that Kim was an abused child.

Dr. Singh examined Kim on March 26, 1975. In his own handwriting that day he set forth his findings on the consultation form. Amongst what he cited under the heading "Impression" was "3) Battered child syndrome" and amongst what he cited under the heading "Suggest" was "4) ask social service worker to look into this family environment."

On March 27, 1975, Dr. Singh had prepared a typewritten report upon that consultation.

That typewritten report states that Jennifer Popen reported to Dr. Singh that Kim was crying, that Jennifer Popen wanted to change Kim's clothing and in so doing found that Kim's left arm was quite stiff, and that when Jennifer Popen tried to straighten it she heard a click and then brought Kim to hospital.

Under the heading of "Impression" Dr. Singh wrote "Questionable battered child syndrome" and then continued:

"It is extremely unusual to break a solid, long bone such as the left humerus, on just by changing the child's hand (sic). This family should be investigated by first, a service worker for the environmental and social status the family lives in."

Dr. Singh described the fracture of the left humerus as a severe transverse fracture with displacement.

In his testimony upon the Inquiry Dr. Singh said that "questionable child abuse syndrome" was entertained because Jennifer Popen's story as set forth in the history was "very, very unusual." On the basis of his training and experience he formed the opinion that that story was not compatible with the injury which Kim had suffered.

In Dr. Singh's opinion "severe force or strong compact force or a violence could cause that sort of fracture on a long bone of that size." I take that to mean such force or violence would be required to cause such a fracture.

Dr. Singh's typewritten report was another instance of eerily accurate prophecy. He wrote:

"I would strongly suspect that the battered child syndrome is present and if we do not protect this child at the present stage, she might end up with a fractured skull or some other fractures later on in her life."

That typewritten report indicates that copies were prepared for Dr. Jumeau and Dr. Lota who Dr. Singh understood to be in partnership. Dr. Singh said another copy would have been placed on Kim's chart at the hospital.

Dr. Singh testified that he asked Dr. Thorp to refer the case to the hospital's social service worker, Mr. Khattab, to investigate the environmental and social status of the family and to "give us a feedback on the circumstances the family lives in." Dr. Singh did not expect to receive any of such "feedback" which he felt would go to the family physicians, Doctors Thorp and Jumeau.

Kim was discharged from hospital on April 3, 1975. The discharge note was to the effect that she was found to have a fractured left humerus "following a fall." That was signed by Dr. Jumeau. That explanatory statement is not in keeping with the facts as shown by the evidence given upon the Inquiry.

Dr. Jumeau testified that he had not seen Kim during that period of hospitalization. He acknowledged that his office had received copies of

reports from Dr. Thorp and Dr. Singh, but that he had not reviewed them at that time but did so "when the story got known." He did not elaborate upon that, but I presume it was after Kim's death, perhaps as late as when the parents appeared for trial in December, 1977.

Dr. Jumeau testified that he had not reviewed Kim's case history or the earlier reports with reference to her admission to hospital on March 22, 1975, when he admitted her to hospital later in April, 1975. He testified that in April, 1975 he made no observation of child abuse in respect of Kim. He testified that he had not reviewed Kim's file because he relied on Dr. Lota to draw his attention to anything "out of the ordinary...and unfortunately it wasn't."

Mr. Khattab testified that he first became aware of Kim in March, 1975. As he put it:

"It was referred to me from the children's ward at the hospital at that time just to talk with the mother because the child was in the hospital at that time with some twisted arm."

He said he was aware that Kim had suffered a fractured arm. The supposed limitation, "just to talk with the mother", is not in keeping with the facts as shown by the evidence given upon the Inquiry.

Mr. Khattab testified that on March 31, 1975, he had spoken to Jennifer Popen who claimed that she was changing Kim and it "happened by chance." He testified that Jennifer Popen seemed very innocent, that he believed her and accepted her explanation and that the case was not reported to a children's aid society or Crown attorney.

I had the impression that Mr. Khattab could not believe that anyone could punish a two month old child. He said:

"I feel that she [Jennifer Popen] is a responsible mother and I have no doubt -- I cannot suspect that this happened as an

abuse, but it can be a chance as she stated."

Mr. Khattab testified that he had no information concerning "the battered child syndrome" and he seemed to indicate that as it was not within his speciality originally he did not care to apprise himself of it. That seems to me to be a startling admission of wilful blindness or ignorance.

Mr. Khattab testified that he had not really been instructed by anyone as to the purpose of his involvement, but he did say that he spoke with Dr. Singh, who told him that Kim had suffered an unexplained injury and asked him to look into the family background. He said he told Dr. Singh he had spoken to Jennifer Popen and that he believed her when she said that "this has happened by accident."

Dr. Singh testified that he had not received a report from Mr. Khattab and had not discussed the matter with him until Kim's admission to hospital in August, 1975.

I prefer the evidence of Dr. Singh to that of Mr. Khattab in that area. I am satisfied that Mr. Khattab knew why the matter had been referred to him and what was expected of him. If he was in any doubt he had access to Kim's hospital file including Dr. Singh's report recommending referral to the social worker and thus could easily have learned what was expected of him and, if still in doubt, he could have inquired of Dr. Singh or one of the other doctors involved.

Mr. Khattab testified that he felt Jennifer Popen was a responsible mother and that Kim had not been injured as a result of abuse. He testified that, as he viewed the events in retrospect, Jennifer Popen had fooled him.

Mr. Khattab testified to the effect that, as instructed by Dr. Singh, he had spoken with Jennifer Popen and they discussed the background of the family and Kim's care. No notes of that discussion were prepared and there was no evidence to indicate that any information obtained by Mr. Khattab, if indeed he obtained any, was passed to Dr. Singh, who had asked for it, or to anyone else. Even

if it appeared to Mr. Khattab that all was in order, it might have been of interest to Dr. Singh and Dr. Jumean to know the nature of the discussion between Jennifer Popen and Mr. Khattab, particularly the explanations given by Jennifer Popen as to how Kim was cared for and how she was injured.

Mr. Khattab does not stand alone to receive criticism for his failure to report upon his performance of the task assigned to him at Dr. Singh's suggestion. There is no evidence that any doctor or any hospital official pursued the matter with Mr. Khattab.

In that connection I accept Dr. Singh's explanation that he expected Mr. Khattab to report to the family doctors, Dr. Jumean or Dr. Thorp.

In the circumstances of the case I am not inclined to be critical of Dr. Thorp for not pursuing the matter to ensure that Mr. Khattab completed the investigation ordered by Dr. Singh. Dr. Thorp was "covering" for Dr. Jumean.

Dr. Jumean's explanation that he had not reviewed Kim's file because Dr. Lota had not drawn it to his attention as containing anything unusual is not acceptable to me. I do not think it is valid. He should have read it whether or not Dr. Lota drew it to his attention.

In all of this no one made any report to a children's aid society or Crown attorney as required by section 41 of The Child Welfare Act.

Perhaps Mr. Khattab expressed most succinctly the reason no one made any such report. He was asked why he had not made the required report. His reply was:

"If I do not know -- if there is no evidence before me because I can be sued by the parents also. -- I can be sued by the parents if I give something which I am not sure of. On what basis I say to them that child is abused?a first case for me I was of course very careful, unless I have evidence I not do it."

With all due respect to Mr. Khattab and anyone else who was like minded, he seems to have been ignorant of or to have misconstrued the provisions of section 41 of The Child Welfare Act, particularly sub-section 2. He placed far too high a standard for the nature of information of physical ill-treatment or need for protection of a child which would require or justify a person to report such information pursuant to section 41 of the The Child Welfare Act.

While it may be that failure to do so had no substantial effect upon the eventual handling of Kim's case by the Society, it is at least unfortunate that no one involved in her admission to hospital made any report to a children's aid society or Crown attorney in compliance with section 41 of The Child Welfare Act.

It would appear that three doctors, Doctors Singh, Thorp and Lota, had expressed some concern as to the possibility that Kim had been abused. That concern was expressed in writing in documents to which Dr. Jumean and hospital staff, including Mr. Khattab, had access and for the safekeeping of which hospital staff were responsible. On his own evidence Mr. Khattab was asked by a member of the nursing staff of the hospital to talk with the mother. The hospital files contain a document showing he was expected to do more. If Mr. Khattab was not fully or properly informed of the concerns and suspicions of the doctors, it would seem to be his responsibility to inform himself and that became ultimately the responsibility of the administration of the hospital.

In my opinion the three doctors, Doctors Singh, Thorp and Lota, were at least justified, if indeed they were not required, by section 41 of The Child Welfare Act, to report their findings and suspicions to a children's aid society or Crown attorney.

By reason of his failure to apprise himself of the contents of Kim's file, as a result of which he remained ignorant of the suspicions of the other doctors, Dr. Jumean could not and did not make any report pursuant to section 41 of The Child Welfare Act. Had he read the file he too would have been justified and required to make such a report.

I do not feel that Dr. McCrudden was in a position such as Doctors Jumean, Singh, Thorp and Lota were. He merely examined the X-ray films and reported thereon. He had no knowledge of the case except what he saw on the films. He did not have sufficient information to require him to make any report pursuant to section 41 of The Child Welfare Act.

Evidence given by various doctors and by Mrs. Hewitt revealed a strong tendency on their part to assume that someone else, the family doctor, should and would, if he felt it appropriate to do so, make any report required by section 41 of The Child Welfare Act. The doctors appeared to believe that the ethics of their profession would limit or prohibit any such report by any doctor other than the doctor in charge of the case. Mrs. Hewitt, whose evidence in this area was supported by that of Dr. Robert Bates, an expert in the field of child abuse, indicated that, by training, nurses reported to the doctor in charge of the case and would rely upon that doctor to make any other or additional report that might be required.

In all of this there seemed to be a reliance upon another or others to make the report required by section 41 of The Child Welfare Act.

I do not think it appropriate for Dr. Jumean not to have reviewed Kim's file prior to signing the document in connection with her release from hospital on April 3, 1975 or on her admission to hospital by him later in April, 1975. I have serious reservations as to what reliance anyone can place upon the contents of the form purporting to authorize Kim's discharge from hospital and to give some details of her injury and treatment, Dr. Jumean signed it. He had not been involved in any way with the occurrence apart from the fact that he was physician to Kim's family and Dr. Lota was associated with him and Dr. Thorp was "covering" for him in his absence.

That discharge note signed by Dr. Jumean would appear to be completely at variance with other records and reports. It would indicate that the injury was "following a fall". Nowhere else on that document, the admission portion, not in the form

signed by Dr. Lota requesting Dr. Singh's consultation, nor in Dr. Singh's consultation report is there any reference to Kim having fallen. More seriously, Dr. Thorp, in the Emergency Entrance Report and the subsequent History Report, clearly states "no history fall" and "no history of accident" respectively.

One is left to wonder as to the basis of Dr. Jumean's discharge note. In his evidence he said he prepared it after Kim's discharge from hospital. He was not sure how long after. As he put it:

"...the child was not there. The records [are] there so I look at the records and from the records..."

One can only wonder what records he read. It seems clear he did not read the request for Dr. Singh's consultation, nor Dr. Singh's consultation report nor Dr. Thorp's history nor even the balance of the very sheet of paper on which he, Dr. Jumean, was writing in other areas of which Dr. Thorp had made some notes.

In my view, Dr. Jumean, or Dr. Lota for him, should have pursued the matter with Mr. Khattab. Such inquiry by Dr. Jumean may have encouraged Mr. Khattab to investigate somewhat more fully rather than to rely upon a mere discussion with Jennifer Popen, a discussion which Mr. Khattab himself described as an interview and not an investigation. But Dr. Singh had recommended an investigation of the family.

In my view, Mr. Khattab should not have been satisfied with only an interview with Jennifer Popen. He should have examined the files and reports in the hospital. On his own evidence they were available to him. One might reasonably expect, as Dr. Singh did, that one employed as a social worker would be aware of the significance of any expression such as "battered baby syndrome" or "child abuse." Mr. Khattab claimed to be not familiar with those expressions. He should have begun the same sort of investigation that any social worker, such as a social worker employed by the Society, might reasonably have been expected to undertake. If he had concern as to his own limitations he should have sought help, probably from the Society and the Sarnia

Police Force. In any event from his reading of the file he should have made a report to a children's aid society or Crown attorney.

Mr. Khattab kept no written record of what he did in response to Dr. Singh's request passed to him by the nursing staff. It would seem to me that it is not unreasonable to expect that when a doctor makes a request for some investigation to be conducted by a hospital's social worker that the procedures adopted by the hospital would require that social worker to respond in writing or at least to record his response so that it would be available to all concerned with the case. Here I am not satisfied that Mr. Khattab in any way responded so as to inform Dr. Singh or anyone of his actions following Dr. Singh's request. Certainly there is no written record of any such response and I have already stated that I prefer Dr. Singh's testimony that he received no response whatever from Mr. Khattab.

In the same vein, while no member of the hospital's staff pursued the matter to ensure that Mr. Khattab conducted the required investigation and reported thereon to the doctor requesting it, none of the doctors involved, Doctors Singh, Lota and Jumeau, pursued the matter. I have earlier mentioned that Dr. Thorp did not either. In effect they all allowed it to lie dormant with Dr. Singh's request left in Kim's file, unattended for all practical purposes.

I have some deep concern that Dr. Singh in his typewritten consultation report said

"I think this should, of course, be discussed and kept confidential."

The reference was to the suspected instance of abuse of Kim. In his evidence upon the Inquiry he indicated that he took that stance because he was expressing in the report merely an opinion, as opposed to a final diagnosis, and was awaiting further information, as from Mr. Khattab, and did not want his preliminary view to be leaked to anyone. He said this was for Kim's protection so as to ensure that Jennifer Popen would not remove her from hospital if she, Jennifer Popen, became aware that there was suspicion and that an investigation might result.

On the surface the suggestion of confidentiality would seem to be contrary to section 41 of The Child Welfare Act if it counselled the withholding of information from a children's aid society or Crown attorney.

There is also some inconsistency in Dr. Singh's evidence here that he was awaiting information from Mr. Khattab. Earlier he had said he did not expect Mr. Khattab to report to him.

As to Mr. Khattab's qualifications, I have some concern that his decision to accept Jennifer Popen's account that Kim's injury occurred by "chance", which I interpret to mean "accident", appeared to be based in large measure on his belief that no one could so harm or punish a child so young. I contrast that basic concept with the evidence of Dr. Bates. Dr. Bates testified that the higher percentage of abuse occurs in respect of infants, to one, two or three years of age, before the infants develop enough of their survival skills and that some children, through no fault of their own, may be abused because they are unwanted or wanted for the wrong reasons or because they are difficult or different or because of some particular situation in the family. As Dr. Bates put it these are "high risk kids." I accept Dr. Bates' opinion. Mr. Khattab's basic concept is not in accord with that opinion.

Dr. Bates in his evidence seemed to suggest that medical personnel should be alert to the presence of sexual abuse. In the light of the post-mortem examination that would appear to be significant in relation to Kim. Neither Dr. Thorp nor Dr. Singh made special reference to any examination of Kim in that regard. But, from Dr. Thorp's evidence and my assessment of Dr. Singh, I feel that I am satisfied Kim's whole body, including areas that might be subjected to sexual abuse, was examined in connection with this hospitalization and nothing untoward was found other than as noted by Dr. Thorp and Dr. Singh.

Dr. Bates in his evidence expressed the view that sometimes parents present a child to doctors or hospitals in the hope that the doctors or hospitals will become aware that the child has been abused.

Jennifer Popen in her evidence seemed to be suggesting that some of what she did was really a cry for help. I am inclined to believe that is an explanation of recent invention. In my view any "cry for help" was well concealed and submerged in lies and deceptions by Jennifer Popen throughout the whole of Kim's life and for a long time after Kim's death.

In reviewing the evidence relating to this incident in Kim's life it seems to me that if all others involved in Kim's admission to and care in hospital had done as Dr. Singh had done, the eventual sad conclusion to her life might have been avoided. Unlike others, Dr. Singh reduced to writing in some detail his assessment of the entire situation. He did not confine his comments only to Kim's physical or emotional condition. He wrote of the conduct of Kim's parents, or one of them, and the variety of inconsistent stories or explanations for her injuries.

Even if all others had written as fully as Dr. Singh, a happier result than occurred still depended upon Dr. Jumeau. He was the family physician who appeared to have overall responsibility for Kim's medical care at the time. No matter what others wrote or recorded their best efforts in that regard would be ineffective unless Dr. Jumeau read and evaluated what they wrote and, if not then knowledgeable as to the symptoms of child abuse and the full significance of what he read, consulted Dr. Singh or someone similarly trained and qualified.

I do gather from the evidence that detection of child abuse or of the possibility thereof is a most difficult task and that many of the indicia thereof are most subtle. Training and experience are essential to enable one to recognize the existence of certain indications of the possible existence of abuse and then to ascribe to them the significance they deserve.

At least some of the medical doctors, nurses and hospital staff, including Mr. Khattab, had ample basis on which to justify a report to a children's aid society or Crown attorney under section 41 of The Child Welfare Act. Their failure to make such a report gave some credence to Mrs. Harvey's suggestion that their failure to do so

contributed to some of the subsequent misadventures which befell Kim. Such failure, if failure it be, by those doctors and other hospital personnel on March 22, 1975 and immediately thereafter had only a minimal, if any, effect upon the development of the tragic story of Kim's life and death.

One may speculate as to what might have happened had one or more of the doctors or hospital personnel made a report under section 41 of The Child Welfare Act at that time. That they did not contributed to the forming of the first arc of the circle of tragedy which eventually ringed Kim and led to her death.

Chapter VI

Significant Events in Kim's Life from April 3 to August 31, 1975

There were a number of significant events in Kim's life during this early period. Evidence with reference to some of those events was supported in part by written records prepared at about the times they occurred. With reference to others, witnesses relied purely upon memory. At least for that reason the evidence is fragmentary and inconsistent in relation to some of the incidents.

Jennifer Popen in her testimony seemed to recall the various injuries suffered by Kim during this period, but was doubtful of times and causes. In respect of some she admitted she had caused them. Others she maintained were "accident(s)."

Dr. Jumean admitted Kim to St. Joseph's Hospital on April 28, 1975. The admission form indicates the existence of upper respiratory infection, bronchitis. She was discharged from hospital on May 2, 1975. No indication of ill-treatment of Kim was noted. But, as I have found earlier, Dr. Jumean had not read the reports or case history with reference to Kim's admission to hospital on March 22, 1975.

Dr. McCrudden performed a chest X-ray of Kim on April 28, 1975 in connection with her admission to hospital that day. At a later time, after further X-rays of Kim on September 1, 1975, he had reason to examine that X-ray film again and he saw thereon no evidence of any fracture of any ribs.

Dr. Jumean also had notes of two visits with Mrs. Popen, apparently with references to Kim, one someday in May 1975 and the other on May 27, 1975. Nothing untoward was noted by Dr. Jumean. In his opinion Kim was well.

Dr. Jumean testified that on June 6, 1975, Kim was brought to him for examination. I am satisfied that Kim was brought to Dr. Jumean by Fay

Popen, an adult relative, who, by reason of her own circumstances was unable to testify upon the Inquiry.

Dr. Jumean's notes in his file are not clear as to the date of that visit. Originally in his testimony, he said the visit was on June 6, 1975. Later he said it was on June 16, 1975.

I am satisfied that Dr. Jumean's telephone call to the Sarnia Police Force was made on June 16, 1975 as recorded by the Sarnia Police Force and not on June 6, 1975 as initially testified by Dr. Jumean.

Dr. Jumean testified that Fay Popen was anxious and worried that Kim was being mistreated. He said he examined Kim.

Dr. Jumean testified that he had telephoned the Sarnia Police Force on the day of that visit.

I should note that Dr. Jumean's testimony was most difficult to follow. In one of his responses to counsel he seemed to indicate that Fay Popen told him that Annals Popen would consume alcoholic beverages and then beat Jennifer Popen, who would take it out on Kim. He said he had made no note of that. He said he knew that Annals Popen drank, but he said Annals Popen was not an aggressive fellow, but was rather quiet. Then he went on to say that he was told, not by Fay Popen, but apparently by Jennifer Popen, that when Annals Popen drank he hit "them", apparently Jennifer Popen and Kim. He continued to say that "sometimes she [Jennifer Popen] makes excuses that the baby-sitter", but he did not continue to explain what he was told about the baby-sitter. Then he went on to say that Jennifer Popen told him that when Annals Popen got drunk he, Annals Popen, hit the baby, Kim.

Maybe Dr. Jumean was another who heard from Jennifer Popen a series of contradictory stories told in rapid fire succession so that they formed really an unintelligible melange.

Dr. Jumean said it was not until long afterward when Jennifer Popen was incarcerated, I would presume after her conviction in December, 1977, that he heard from her that she hit Kim after Annals

Popen had hit her, Jennifer Popen. He was in error in saying that.

When confronted with the evidence and records of the members of the Sarnia Police Force to the effect that he had told Staff Sergeant Allan of that alleged sequence of assaults during a telephone conversation on June 16, 1975, Dr. Jumeau acknowledged that he could have been told by either or both of Jennifer Popen and Fay Popen that Annals Popen would hit Jennifer Popen who in turn would hit Kim.

Dr. Lucy Duncan, Medical Officer of Health of the County of Lambton and Director of The Lambton Health Unit, testified that during a telephone call to her on June 16, 1975 Dr. Jumeau had told her of the alleged "chain reaction" of assaults.

The records of The Lambton Health Unit prepared in June, 1975 make reference to that chain reaction in this way:

"Report (hospital report) of mother beating baby. Husband drunk and beats wife."

Those records also contain the following:

"Dr. Jumeau notified police of this incident. Baby had lacerations of lip and multiple bruising."

When Dr. Jumeau saw Kim on June 6 or 16, 1975 he recorded his observations of Kim as follows:

"Baby battered syndrome. Multiple bruising of arm and laceration lower lip with an abrasion on face."

Dr. Jumeau testified that he telephoned the Sarnia Police Force that same day. His records produced upon the Inquiry make no reference to that telephone call nor to the call to The Lambton Health Unit. In his evidence upon the Inquiry he did not mention his telephone call to The Lambton Health Unit.

Staff Sergeant James Allan, Sarnia Police Force, testified that he, while on duty, had received

a telephone call from Dr. Jumean on Monday, June 16, 1975.

Staff Sergeant Allan produced a City of Sarnia Police Force Investigation Report, numbered 75-287-i.

The starting point of that form as noted thereon is 2:30 p.m. on June 16, 1975. The first page of the form, signed by Staff Sergeant Allan, refers to Dr. Jumean as complainant and there is a typed resume of the contents of the telephone conversation and of some of the police activity with reference to the matter.

Staff Sergeant Allan testified that that form was prepared in accordance with the procedure of the Sarnia Police Force and that other entries were placed upon it chronologically as they occurred.

The telephone conversation as recorded on that form by Staff Sergeant Allan was that Dr. Jumean called to report a battered child; that Dr. Jumean stated that someone, who wished to remain anonymous, had brought Kim, the child of Jennifer Popen and Annals Popen, to Dr. Jumean's office on that date, June 16, 1975; that Dr. Jumean stated that about six weeks earlier Kim was hospitalized with a broken arm and that Jennifer Popen, the mother, had at that time said Kim had fallen; that Dr. Jumean had said that about three weeks earlier Kim was treated for a respiratory ailment and at that time the doctor observed that Kim had a black eye; and that Dr. Jumean stated that at this time Kim had a cut lip and severe bruises over the face, neck and buttocks.

The investigation report above Staff Sergeant Allan's signature continues:

"Hearsay information received by the doctor was to the effect that the father comes home drunk and beats up the mother who in turn beats up the child for retaliation."

Use of the adjective "hearsay" seems to me to import the meaning that Dr. Jumean received that information from someone other than Jennifer Popen or Annals Popen, presumably from Fay Popen, who took Kim

to Dr. Jumean's office on June 16, 1975 because of her concern for Kim's well-being.

Bearing in mind the observations made by the Society's personnel on June 17, 1975, that ten day delay, from June 6, 1975, when he may have examined Kim if his initial evidence and interpretation of his notes are correct, although he could be in error because of poor writing on the file card, until June 16, 1975, when he reported, by telephone, to the police and The Lambton Health Unit, may have substantial significance.

On medical evidence presented upon the Inquiry I am satisfied that the healing process may have resulted in injuries which were readily apparent to Dr. Jumean on June 6, 1975 being difficult for anyone other than a medical doctor, and perhaps even for a medical doctor, to detect on June 17, 1975. Indeed Mrs. Saul testified that on examining Kim on June 17, 1975 Mrs. Hoad had commented that the bruises were just about healed. Mrs. Saul's recording in the files of the Society, restated in her oral testimony upon the Inquiry, was that Mrs. Fay Popen said on June 17, 1975, that the bruises were then about two weeks old.

Staff Sergeant Allan testified that he had no investigative personnel available to him for this matter on June 16, 1975. He testified that on June 17, 1975 he orally assigned the investigation to Police Constable Gander and instructed Police Constable Gander to go to the Society and have one of the Society's workers accompany him to the Popen home.

Police Constable Gander testified that instructions were given to him orally by Staff Sergeant Allan who said Dr. Jumean had informed him that Kim had been abused and was supposed to have marks or bruises on her body. He said he was not then told of the hearsay information as to a chain of beatings from Annals Popen to Jennifer Popen to Kim, but he did learn of it later.

Police Constable Gander testified that on June 17, 1975, at about 10:30 a.m., he went to the Society's office and spoke with Mrs. Dick to inquire

if the Society had a file on the family and to seek a worker to go with him and examine Kim.

Police Constable Gander, accompanied by Mrs. Saul and Mrs. Hoad, a worker and volunteer respectively of the Society, assigned by Mrs. Dick, went to locate Kim. The address originally given to Police Constable Gander for the Popen home was out of date; so, through the Sarnia Police office who contacted Dr. Jumeau, he obtained an address where the child was located. That address was the home of Mrs. Fay Popen.

Police Constable Gander stood by and watched while Mrs. Saul and Mrs. Hoad undressed Kim and examined her. He saw no marks upon Kim and overheard Mrs. Saul and Mrs. Hoad exchange remarks to the effect that Kim appeared to be all right. He said he understood there may have been a light bruise around the chin or mouth area.

Police Constable Gander testified that while Mrs. Saul and Mrs. Hoad were with Kim and Mrs. Fay Popen, Jennifer Popen and Annals Popen arrived. He said Jennifer Popen appeared to be upset. In the presence of himself, Mrs. Saul and Mrs. Hoad she claimed to be a good mother. He said Mrs. Saul explained to her the purpose of the visit and that Kim could be removed from her home by the Society if she had been abused. He said Annals Popen then spoke up to deny any abuse by the parents, but to claim that Kim had accidents such as falling to the ground. He said Jennifer Popen took Kim from Mrs. Saul who explained to her that the report which had led to the visit appeared to be unfounded and that there was no indication of abuse.

Police Constable Gander testified that Mrs. Saul told Jennifer Popen that she, Mrs. Saul, would call to see her within a week to advise her as to Kim's care and to make observations. Police Constable Gander went on to say that later in the police cruiser Mrs. Saul repeated that she would visit Jennifer Popen within a week or so and then would advise the Sarnia Police Force as to how things were proceeding.

Mrs. Saul testified that she had told Police Constable Gander that the Society would be

involved for a long time, but she felt she said no more than that and she denied telling him she would make any report to him.

The Investigation Report of the Sarnia Police Force under date of June 17, 1975 states:

"Sandy Saul will contact us next week and let us know what the reaction and response is of Mrs. Jennifer Popen."

When coupled with other evidence of a telephone call by Police Constable Gander to Mrs. Saul, that notation supports the evidence of Police Constable Gander as to Mrs. Saul's remark to him that she would report to the Sarnia Police Force after her visit to Jennifer Popen. Thus I accept that portion of Police Constable Gander's evidence in preference to that of Mrs. Saul relating to that point.

The evidence of Mrs. Saul was that on June 17, 1975 she was told by Mrs. Dick that Police Constable Gander had reported to the Society that the Sarnia Police Force had on June 16, 1975 received an anonymous call to the effect that Kim had multiple bruises on her face and neck. Mrs. Saul testified that, enroute to visit Kim, Police Constable Gander made reference to the anonymous call and to some information the Sarnia Police Force had received to the effect Kim had, during the preceding six weeks, been admitted to hospital on one occasion with a broken arm and on another occasion with a black eye. Mrs. Saul said Police Constable Gander told her Dr. Jumeau was Kim's doctor.

Mrs. Saul testified that, on locating Kim at the home of Mrs. Fay Popen, she and Mrs. Hoad examined Kim. She said Kim appeared physically normal, but Mrs. Fay Popen pointed out some faint bruises, which Mrs. Saul would not have noticed if they had not been pointed out, and said Kim had received those bruises about two weeks earlier. That reference to time tends to support the conclusion that, while Dr. Jumeau may have seen Kim on June 6, 1975, he did not advise the Sarnia Police Force until June 16, 1975. Mrs. Saul also noticed a rather fresh cut on Kim's lip. She said Mrs. Fay Popen told her Jennifer Popen had caused that cut and another on Kim's tongue while using a spoon to force Kim to eat.

Mrs. Saul said Mrs. Fay Popen was concerned as to the care Kim had received.

Mrs. Saul said that later, after Kim had been dressed, she was holding Kim when Jennifer Popen and Annals Popen arrived. She said Annals Popen remained in the background and said very little. Apparently Jennifer Popen was the dominant partner and Annals Popen the passive partner. Jennifer Popen answered Mrs. Saul's questions or comments and prevented Annals Popen from talking. Mrs. Saul's assessment was that "Jennifer Popen seemed to be running the family."

Mrs. Saul said Jennifer Popen grabbed Kim and started toward the door. She said Jennifer Popen did not respond to comments addressed to her by Mrs. Saul and appeared to be very hostile. Police Constable Gander prevented Jennifer Popen from leaving with Kim. Mrs. Saul said she explained to Jennifer Popen that the Society was concerned about Kim's welfare and was available to help in her care. Mrs. Saul said that in discussion about the cut on Kim's lip Jennifer Popen acknowledged that she had had a problem with Kim's feeding. Mrs. Saul said that Jennifer Popen resisted the suggestion that someone from The Lambton Health Unit would come to help with that problem, saying that she knew how to care for her "children." Mrs. Saul said Jennifer Popen vehemently denied that she had ever abused Kim.

Jennifer Popen testified that she told Mrs. Saul, Mrs. Hoad and Police Constable Gander that before she would let anyone take Kim from her she would leave Canada, presumably with Kim.

I think that Mrs. Saul's evidence as to Kim's behaviour through all of this is quite interesting and important. She said Kim was "very, very content with the aunt [Mrs. Fay Popen], smiling and just gurgling like a child does." Kim seemed "pretty good" with Mrs. Saul and did not overly react even though Mrs. Saul was a stranger. Then, Mrs. Saul testified:

"But when [Kim] went into [Jennifer Popen's] arms....she fussed and squirmed and just wouldn't settle...began to really

fuss...did not want the mother feeding her."

Mrs. Saul said she was very concerned about that as perhaps an indication that Kim had been abused. I would presume she was referring to the possibility that Kim had been abused by Jennifer Popen.

Thus, in June 1975, the Society, in the person of Mrs. Saul and Mrs. Harvey to whom Mrs. Saul immediately reported her observations, was aware of a possible problem in the relationship between Jennifer Popen and Kim. Kim's reaction to her mother and to Jennifer Popen's attempts to feed her and generally Jennifer Popen's handling of Kim perhaps were indications of the possibility of child abuse that social workers are alert to note, signals of possible danger to the child.

Mrs. Saul testified that, on leaving the Fay Popen home, she told Jennifer Popen that someone from the Society

"would be back in the very near future -- in the next week or so."

Mrs. Saul said she had decided that a nurse from The Lambton Health Unit should visit the home, either with the Society's worker or alone, because she felt Jennifer Popen needed help in learning to care for Kim. Mrs. Saul said that on her return to the Society that day she recommended that a nurse from the Lambton Health Unit become involved.

Mrs. Hoad, a qualified nurse who served as a volunteer with the Society, testified that she accompanied Mrs. Saul and Police Constable Gander on their visit to see Kim on June 17, 1975. She said she was merely a witness, that Mrs. Saul was the professional social worker. She said she looked at Kim from a distance, but saw no injuries which she remembered other perhaps than a cut of the lip which may have healed. She recalled that Mrs. Fay Popen had said bruises had been caused sometime earlier. She did remember the arrival of Jennifer Popen and Annals Popen. She said Jennifer Popen was very irate and very hostile toward Mrs. Saul, Mrs. Hoad and Police Constable Gander.

Mrs. Hoad testified that Jennifer Popen "snatched" Kim and handled her "very abruptly or roughly." She described Annals Popen as being "very passive...like a shadow in the background." She said she was concerned

"about the [emotional] maturity of the parents....the mental health aspect of this case....the hostility of the mother [and that Jennifer Popen] was very, very young and the way in which she handled her infant."

Thus, in June, 1975, the Society had available to it an expression of concern by a person with some degree of expertise, a qualified nurse, as to conditions in the Popen family and Jennifer Popen's treatment of Kim. That concerned person was also a volunteer worker with the Society.

Mrs. Saul testified that on her return to the Society's office on June 17, 1975, she spoke briefly with Mrs. Dick to state that she

"was very concerned about the situation."

Mrs. Saul testified that she thought there was a very good possibility that Kim "definitely had been abused" and, from Kim's behaviour and Jennifer Popen's reaction to Mrs. Saul's visit,

"might once again end up abused or in a situation of danger."

That was a sad and accurate prophecy. It was not unlike Dr. Singh's comment in March, 1975.

Mrs. Saul testified that after speaking briefly with Mrs. Dick she immediately spoke with Mrs. Harvey, her supervisor, to explain the situation and her reasons for concern that Kim was an abused child, without knowledge as to by whom Kim had been abused, but with attention directed to Jennifer Popen because of her apparent dominant position in the family and because she had answered all the questions put by Mrs. Saul.

Mrs. Saul testified that her oral report to Mrs. Harvey was quite lengthy and detailed. She said

that was because she felt and recommended to Mrs. Harvey that the matter should be transferred immediately to a social worker for long term service rather than being left with her, Mrs. Saul, as the investigating worker whose role was that of initial investigation and short term counselling. Mrs. Saul said that it was not unusual for a case to be so transferred immediately if, as she felt was the case in reference to Kim's family,

"it was very obvious that involvement with the agency [Society] and this particular family would be a long term."

Mrs. Saul testified that she explained to Mrs. Harvey why she made that recommendation for immediate transfer and she said that Mrs. Harvey agreed with her that

"this case definitely needed to be transferred to a long term worker."

Mrs. Saul testified that Mrs. Harvey mentioned that the case would be transferred, perhaps to Mr. Carter.

Thus, as early as June 17, 1975, an experienced and capable social worker employed by the Society, Mrs. Saul, had formed and voiced to her superior, who appeared to concur, suspicion that Kim had been abused and that possibly Jennifer Popen had inflicted that abuse.

Mrs. Saul testified that she had prepared some hand-written notes, perhaps before talking with Mrs. Harvey, which would have been destroyed when the material in them was prepared in typewritten form. She said she had given those hand-written notes to Mrs. Harvey. She said that the portion of the record of the Family Services Department of the Society under date June 17, 1975 appearing opposite her initials and those of the typist, "SS/mh," was a correct transcription of her handwritten notes although she could not recall having written the last few lines of that typewritten item. That latter portion made some comment upon Jennifer Popen and Annals Popen and mentioned Dr. Jumeau. She said all of that recorded information was known to her on June 17, 1975.

Mrs. Saul said she had understood that a file had been opened at once and that her handwritten notes had been placed in that file for transcription. I can only surmise that that understanding flowed from her discussion with Mrs. Harvey. The transcription of Mrs. Saul's notes contains reference to Kim's upset reaction to Jennifer Popen, particularly when Jennifer Popen prepared to feed her. The transcription describes Jennifer Popen as being "extremely defensive and hostile." The transcription contains the following statements by Mrs. Saul:

"I believe it would be advisable to take a L.H.U. [The Lambton Health Unit] nurse and introduce her whether Jennifer [Popen] wants one or not. As well this defensive hostile young mother should be closely supervised considering the history of the recent six weeks."

The transcription also contains the name and telephone number of Dr. Jumeau who is described as being the family physician.

Mrs. Saul testified that, while she felt she had achieved quite a bit on June 17, 1975, clearly the investigation was not then complete and she may well have failed to note all areas of concern or subtleties of possible danger to Kim. As she put it:

"I didn't think that I had found everything out by any means...There were more facts I felt needed to be discovered..."

Clearly the worker to whom the case was to be transferred would have been expected to complete the investigation in greater depth, including inquiry as to the allegations of prior incidents of injury to Kim and inquiry of the medical personnel involved in the diagnosis and treatment of such injuries and "the history of the recent six weeks" mentioned by Mrs. Saul in her notes and by Mrs. Dick in her notes. Those notes eventually were transcribed and form part of the Society's records of Kim's case.

Mrs. Saul regarded her involvement in the case to have been completed by her oral report to Mrs. Harvey and the preparation, before or after that

report, of her notes as to the occurrence and the delivery of those notes to Mrs. Harvey.

Mrs. Dick testified that she had assigned Mrs. Saul and Mrs. Hoad to accompany Police Constable Gander when he reported to her that the Sarnia Police Force had received an anonymous call the previous evening to the effect that Kim had multiple bruises over the face and neck. Police Constable Gander had also told her that over the preceding six weeks Kim had had a broken arm on one occasion and a black eye on another occasion when admitted to hospital.

Mrs. Dick said that on her return to the Society Mrs. Saul did briefly mention her very strong concerns about the matter and her probable recommendation to Mrs. Harvey that a longer term social worker be assigned for ongoing involvement with the Popen family.

Mrs. Dick continued her testimony to say that later, on June 17 or June 18, 1975, Mrs. Harvey said she would be assigning the case to Mr. Carter, a long term worker. Mrs. Dick said that it was Mrs. Harvey's responsibility to make that decision and assignment. Mrs. Dick said this information was given to her by Mrs. Harvey officially so that the Society's records would be prepared to show that responsibility for the case had been transferred from the short term team, Mrs. Dick's team, to the long term team of which Mr. Carter was a member.

Mrs. Dick agreed that no file on the case was opened in the Society on June 17, 1975. She said that at that time the Society was not opening files "that immediately unless a child had been brought into care" and that there was otherwise a twenty-one day period for investigation and determination as to whether a file should be opened. I gathered that the decision that a file would be opened would be made if, in consultation with the supervisor, the social worker assigned to the case decided that it required ongoing service by the Society.

At the time of Police Constable Gander's discussion with her Mrs. Dick made some notes of the conversation. She said the notes were made on an intake slip, "a little slip of paper" to use her words, and would have formed the basis for the paragraph of

the record of the Family Services Department of the Society under date June 17, 1975 appearing opposite her initial and those of the typist, "AD/mh." She said that once the typewritten record was prepared the handwritten intake slip would be destroyed.

Mrs. Dick testified that any handwritten notes of events prior to the opening of the file would be kept

"presumably with the worker who would be looking after the case."

That Mrs. Dick could only make that presumption indicates to me that the Society had no clear policy and procedure on the matter. If there had been any policy or procedure Mrs. Dick should have known it. If there was such a policy or procedure I think she would have known it. Mrs. Dick felt that Mrs. Saul would have given her handwritten notes to Mrs. Harvey when Mrs. Harvey was assigning the case to the ongoing team.

Mrs. Harvey testified that "it was a standing procedure" that two of the Society's personnel would respond immediately to any report of child abuse.

The written policies and procedures of the Society filed as two exhibits upon the Inquiry do not mention any such so called "standing procedure". Each of the documents is composed of only two pages and a small fraction of a third page. One of the documents is entitled "Policies for Child Care Services." The other is entitled "Policies in regard to Family Services". Neither document makes any mention of child abuse or any similar term. So that readers of this Report may for themselves assess the adequacy of those policies they are set forth in full in Schedules 2-L and 2-M to the Report.

Mrs. Harvey's recollection was that Mrs. Saul had brought Kim's case to her attention at a meeting of the long-term team of the Society's workers on June 17, 1975 and the case was discussed at that meeting. No minutes of such meeting were available to support that evidence. Mrs. Saul did not mention any such team meeting. Mrs. Dick did not

mention it. I think Mrs. Harvey is in error in her recollection.

Mrs. Harvey testified that on receiving the information from Mrs. Saul, she instructed Mrs. Saul "to prepare the material immediately." Mrs. Harvey said that instruction was followed by Mrs. Saul completing what Mrs. Harvey said was an "intake slip." I understand that to be the same document which Mrs. Saul described, merely her handwritten notes. Mrs. Harvey agreed that those notes would have been destroyed. She said that would have been in September, 1975 when the file was formally opened and a typewritten record for the file was begun. Mrs. Harvey described the file as being entitled "Record of Inquiry."

That file is composed of a face sheet which records Kim's name and some particulars of her and her family. It is a printed four page form with handwriting thereon and in the upper left corner the date thereof is indicated as "D 31 M8 975," which I take to be August 31, 1975. Clearly some material has been added at a later date for there is reference to the birth of Kim's brother on July 6, 1976. It indicates that the matter was referred to the Society by medical and police personnel.

Attached to that Record of Inquiry are fourteen pages, substantially all typewritten, but with some handwritten notations.

In respect of the period I am considering in this Chapter of the Report, April 3 to August 31, 1975, there are several entries.

There is an item under date of June 17, 1975 apparently typed on the basis of notes or information provided to the typist, but originally prepared by Mrs. Dick. There is no satisfactory evidence as to how or when or by whom the material was given to the typist or when it was typed or as to where and with whom Mrs. Dick's notes reposed from June 17, 1975 until transcribed. The typing occurred after August 31, 1975.

This item records Police Constable Gander's visit to the Society and his reference to there

having been an anonymous call to the Sarnia Police Force. It contains the following sentence:

"Allegedly over the last six weeks the infant has had a broken arm on one occasion and on another a black eye when admitted to hospital for other causes."

Thus clearly, on June 17, 1975, the Society was aware not only of the call to the Sarnia Police Force on June 16, 1975, but also of allegations of occurrences during the preceding six weeks. These allegations surely must have been of concern to the Society as it considered its position in relation to Kim, but there was no evidence that during the period covered by this Chapter of the Report any effort was made by the Society to inquire into the allegations.

There is a second item under date June 17, 1975 apparently typed on the basis of notes or information presented to the typist, but originally prepared by Mrs. Saul. Again there is no satisfactory evidence as to how or when or by whom the material was given to the typist or when it was typed or where and with whom Mrs. Saul's notes reposed from June 17, 1975 until transcribed after August 31, 1975.

This item, as noted above, records the visit of Mrs. Saul, Mrs. Hoad and Police Constable Gander to examine Kim on June 17, 1975 and Mrs. Saul's observations, including her observations of the relationship between Jennifer Popen and Annals Popen. It contains Mrs. Saul's opinion of Jennifer Popen and her belief that close supervision was required.

Thus the Society had an assessment, however preliminary or tentative, by Mrs. Saul of Jennifer Popen and again there was reference to "the history of the recent six weeks."

The item also contains reference to Dr. Jumeau as the family physician. Thus I am satisfied that, on June 17, 1975, the Society was aware that Dr. Jumeau could be a source of information as to Kim's care and well-being. But no effort was made to inquire of him as to Kim's medical history.

Clearly the Society did nothing with reference to Kim from June 17, 1975 until August 31, 1975.

Mrs. Saul testified that her conversation with Mrs. Harvey, on June 17, 1975, was the last contact she remembered with the case other than perhaps to respond to a telephone call from the Sarnia Police Force and to advise the caller she was no longer involved in the case which had been transferred to Mr. Carter. The Society records contain no notation of any such telephone call.

Police Constable Gander testified, and the Sarnia Police Force's Investigation Report supports him in part, that on July 2, 1975 he telephoned Mrs. Saul because it had been arranged that she would advise the Sarnia Police Force of the results of the Society's involvement. No such advice had been received by the Sarnia Police Force; so he telephoned Mrs. Saul for information. He said Mrs. Saul advised him Kim's case had been assigned to Mr. Carter, and he felt that she had added that Mr. Carter had not yet been able to see Mr. and Mrs. Popen.

Mr. Carter testified that Police Constable Gander had been in the Society's offices on another matter on August 29, 1975, but spoke of Kim's case at the time.

For this Mr. Carter seemingly relied upon the fact that there was a paragraph to that effect in the Society's typewritten notes.

With all respect to Mr. Carter and the Society, that is indeed a slim reed upon which to rely, it being evident, in part even on the specific evidence of Mr. Carter himself, that sometimes the typing of the record was done a long time after the event. It is equally evident that sometimes the typewritten version was not wholly accurate and the original author of any note or "little slip of paper" used as a foundation for the typing did not always compare the typewritten version with his or her handwritten notes to confirm the accuracy of transcription. Indeed until this Inquiry was convened, Mrs. Saul had not seen the typewritten transcript of her notes. She assumed Mrs. Harvey would have checked that transcript against the original notes.

Mr. Carter, in reviewing the typewritten record, said that at least two items he had himself prepared for inclusion therein were missing. Apparently they were not transcribed. He said that another item which was transcribed, that relating to his alleged conversation with Police Constable Gander on August 29, 1975, was in error in that it stated:

"we [the Society] should hold off."

Mr. Carter testified that it would be more accurate for the transcript to read

"He [Police Constable Gander] didn't say not to interfere -- we should ask their help."

Mr. Carter testified that another item was not transcribed in the sequence in which he recalled having dictated it.

The entire transcription under date of August 29, 1975 is as follows:

"H.R.C. had talked with Detective Gander, City Police, re a home visit and was told that the current situation with police and parents was most 'volatile' and we should hold off. He would send an occurrence report and also keep the home under surveillance and report back. No report was received."

I note that, unlike the item acknowledged by Mr. Carter to have been written by him, this item does not bear his initials or those of the typist in the margin. As well the style of writing is different. This item opens with the initials "H.R.C." in the body of the item. That indicates to me that someone other than Mr. Carter wrote it. In the item written by Mr. Carter, the lengthy dictation from September 1, 1975 to February 29, 1976, his initials appear at least twice with those of the typist in the margin, but do not appear in the body of the item. The item written by Mr. Carter is written in the first person singular when referring to the author. The item under date of August 29, 1975 is not so written.

The last four words of the item, "no report was received," satisfy me that the item was written after August 29, 1975.

I find that Mr. Carter neither wrote nor dictated the item under date of August 29, 1975 which the Society's records attribute to him. It is preceded by an item dated June 19, 1975 with Mrs. Harvey's initials in the margin. I believe that Mrs. Harvey wrote the item under date of August 29, 1975. I am supported in that by the reference in the item to concern that Kim might be removed to Jamaica. Mrs. Saul testified she may have mentioned that to Mrs. Harvey on June 17, 1975.

Further Mrs. Saul testified that she had not spoken to Mr. Carter about Kim's case. I am also supported by Mrs. Saul's evidence that no one from the Sarnia Police Force had suggested to her that she delay any visit to the Popen home. Both she and Police Constable Gander in testimony upon the Inquiry referred to her intent to visit the home within a week of June 17, 1975. The Sarnia Police Force's Investigation Report contains no reference to any occurrence between June 17 and August 31, 1975 apart from Police Constable Gander's telephone conversation with Mrs. Saul on July 2, 1975. I heard no evidence as to how Mr. Carter might have obtained information as to Jennifer Popen's possible flight to Jamaica with Kim.

There was no factual basis for that item dated August 29, 1975.

No one from the Sarnia Police Force who testified had any recollection of any such conversation with Mr. Carter on August 29, 1975 and the Police Investigation Report contains no notation of it. Police Constable Gander specifically denied any involvement with the case after June 17, 1975, apart from his telephone call to Mrs. Saul on July 2, 1975.

Police Constable Gander specifically denied that he had given any assurance to the Society or made any statement to the effect that the Sarnia Police Force would keep the Popen home under surveillance. I should mention that any such assurance, even if given, would seem to me to be of little value

to the Society in relation to its performance of its duties and certainly would not be cause for the Society who, to my mind clearly had primary responsibility in the case, to refrain from performing its function which was to ensure that Kim was protected.

Various witnesses in the employ of the Society appeared to stress that Police Constable Gander had stated on June 17, 1975 that the telephone call to the Sarnia Police Force on June 16, 1975 was "anonymous." They said it would have been helpful to the Society had they known that the call had been from a medical doctor. Be that as it may, Mrs. Saul testified that that error or omission by Police Constable Gander or the lack of information supplied to the Society did not affect her opinion, because of "the nature of what [she] saw that day [June 17, 1975]." At the same time the Society was aware of Dr. Jumeau's role as the Popen's family physician.

I largely discount and disregard the protestations of those of the Society's personnel who suggested that the handling of Kim's case in June, 1975 might have been different if the Sarnia Police Force had indicated to the Society that the complaint came from a medical doctor rather than from an anonymous source.

In my view the Society were not in any meaningful way misled in June, 1975. They just did nothing after June 17, 1975 until August 31, 1975 and then only because of another occurrence.

Mrs. Saul expressed a similarly critical opinion with reference to the fact that on June 17, 1975, the Society had not received copies of or information about medical and hospital records and reports concerning prior injuries to or treatment and hospitalization of Kim. An example of those would be Dr. Singh's report of March 22, 1975 wherein he expressed strong suspicion that Kim was a victim of abuse and mentioned the battered child syndrome.

Mrs. Saul felt that all of that may have been of assistance to her on June 17, 1975 particularly from the point of view of alerting her to what she should be looking for and the questions she should be asking. She felt they would have been of

particular assistance to the worker to whom the case would be assigned for the continuing investigation by and involvement of the Society.

I share the thought inherent in Mrs. Saul's testimony. That thought is that the Society should have at once investigated the allegations of prior incidents of injury and possible abuse. It was a simple chore left undone by the Society. The Society was aware that the allegations related to "six weeks" preceding June 17, 1975 and to Kim's prior admission to hospital.

I have already commented upon the failure of those involved with Kim's hospitalization in March and April, 1975 to make any report pursuant to section 41 of The Child Welfare Act. That failure does not absolve the Society from liability for its failure from June 17, 1975 onward to seek out that information from them. It should not have been a difficult task. Dr. Jumeau was known to them as the Popens' family doctor. There are only two public hospitals in Sarnia.

If Mrs. Saul in her testimony was suggesting that the Society was not expected to investigate to obtain information, I regret the suggestion. The personnel of the Society were not entitled to assume that others would obtain and furnish to the Society all the information needed by the Society to manage Kim's case.

Mrs. Saul felt that, even with all of that information about prior events and injuries to Kim, her observations of Kim's condition on June 17, 1975 would not have justified her apprehending Kim at that time as a child in need of protection under The Child Welfare Act. That was so even though she did have great concern that Kim may have been abused and did feel she might be abused in the future.

Mrs. Saul testified that after her report to Mrs. Harvey on June 17, 1975, she had no further connection with Kim's case and she made no inquiry as to its progress. In the light of her real and justified concern for Kim's welfare on June 17, 1975 I am surprised she made no such inquiry. I do not suggest there was any obligation upon her to do so. Even she acknowledged it would have been advisable

for her to have had a discussion with the long-term worker, Mr. Carter as she understood, in which she could have expressed the details of her concern. She felt, however, that the obligation, if any, to arrange such a discussion would lie on the long-term worker who could seek information from her in clarification or enlargement of her recording.

In retrospect Mrs. Saul acknowledged that, had she approached Mr. Carter, the failure of the Society and Mrs. Harvey to open the file and to assign ongoing responsibility for management of the case would have been revealed.

Thus it is apparent to me that, from June 17 until August 31, 1975, the Society were aware of incidents in Kim's life which should have been investigated, but nothing was done.

It is clear to me that the Society was lacking in appropriate procedures. It is inexcusable that a matter such as this, regarded even by the Society's personnel as one requiring serious, urgent and long-term investigation and involvement by the Society, should be permitted to remain unrecorded and unattended for two and one half months. I am satisfied that that came about largely, if not solely, because of the absence of appropriate procedures and systems within the Society.

The methods employed by the Society on June 17, 1975 and later to purport to record the events of that day result in the Society's records in this matter being woefully lacking in credibility. If one were to read those records without having heard the testimony given upon the Inquiry one would have a picture of those events which was far removed from the facts.

Clearly the typewritten transcript was prepared no earlier than September, 1975. The handwritten notes of Mrs. Dick and Mrs. Saul on which the typewritten transcript is based are not available to enable any verification of the accuracy of transcription. Neither Mrs. Dick nor Mrs. Saul compared the typewritten record purporting to be a copy of her handwritten notes with her own notes to ascertain the accuracy of transcription. Mrs. Saul had not seen

the typewritten record until she read it in preparation for her testimony upon this Inquiry. The typewritten transcript was not manually initialled to indicate that the person originally creating the entry had read and approved the transcript.

There is no clear evidence as to just where those handwritten notes may have been from June 17, 1975 until the typewritten versions were prepared. It seems likely that at least Mrs. Saul's notes were left with Mrs. Harvey. Perhaps Mrs. Dick's notes too were given to Mrs. Harvey, but Mrs. Harvey seemed to deny that and speculated that Mrs. Dick may have assembled all of the material and given it to the typist in September. That uncertainty is a demonstration of the lack of system or control of records within the Society.

Mrs. Harvey in her testimony spoke of a card index file. She said such a card with reference to Kim should have been prepared in June, 1975. Clearly it was not. Indeed, if my memory of the evidence is correct, the original of such card which was presumably prepared when the file was opened in September, 1975 could not be located, but Mr. Carter had a copy which had been given to him when the case was assigned to him in September, 1975.

Mrs. Harvey suggested that Mrs. Saul's notes or the contents of them would have been discussed at a meeting of certain Society workers on June 17, 1975. As indicated earlier I am not prepared to accept that suggestion. No minutes of any meeting made available to the Inquiry support it.

Mrs. Harvey testified that, for some unexplained reason on August 29, 1975, she checked to see what was happening to the case, that she called Mr. Carter to her office and told him to call the Sarnia Police Force to inquire of them as to the state of the case. She said Mr. Carter had reported back to her that the police regarded the matter as most volatile and requested that the Society not visit the Popen home and the police would forward a report.

When asked if he had any discussion with Mrs. Harvey immediately subsequent to the conversation which he said he had had with Police Constable Gander on August 29, 1975 Mr. Carter's response was:

"If I did it may have been a passing comment which often occurs about many cases."

Thus Mr. Carter's evidence does not support Mrs. Harvey's evidence to the effect that, on August 29, 1975, the initiative for whatever, if anything, happened on that day came from her.

I am not prepared to find that anything with reference to Kim was discussed or done by any of the Society's personnel, specifically Mrs. Harvey and Mr. Carter, on August 29, 1975 nor am I prepared to accept Mrs. Harvey's testimony that on August 29, 1975 she dictated the paragraphs of the recording bearing that date and the date June 19, 1975. Mrs. Harvey said the final paragraph dated August 31, 1975, which was

"Case opened to H.R. Carter"

was so dated for statistical and thus for financial reasons.

I am prepared to accept that she dictated those paragraphs. But she did not do so on August 29, 1975. She did so after August 31, 1975.

I note particularly that the following paragraph dealing with various events, including August 31, 1975, also originally purported to bear date August 29, 1975. Mrs. Harvey called it a "typist error." I do not think so. Mrs. Harvey acknowledged she had corrected that in ink to August 31, 1975 and also made a note for an insertion of that point from another page.

As Mrs. Harvey said in testimony: "It's such a mess." I agree.

Regretfully Mrs. Harvey's memory, which put everything in as favourable a light as possible for her, did not help to clear up the "mess."

I am satisfied that on June 17, 1975 Mrs. Harvey assumed personal responsibility for the handling of documentation of this case. She said she knew it would require a longer period of time than the short term workers would give, which was three

months. She then intended to assign it to Mr. Carter for ongoing investigation and service on behalf of the Society. That assignment was not made and Mrs. Harvey had no explanation for her failure to assign the case to Mr. Carter.

Mrs. Harvey gave no explanation as to what had prompted her on August 29, 1975 to speak to Mr. Carter. She sought to explain the interval from June 17, 1975 to August 29, 1975, by saying that it was not unusual for Mr. Carter to work on his own without reporting to her and that the summer months and vacations interfered with regular staff meetings and reports. She also indicated that the immediate assignment of the case to the long-term worker, Mr. Carter, perhaps resulted in the oversight in preparation of the intake work documentation. She nonetheless testified that it was not unusual for cases to be transferred so quickly. She had no explanation for the case coming to her attention or mind on August 29, 1975.

To my mind the supposed resurgence of the case in the Society on Friday, August 29, 1975, just a day or two before Kim was admitted to hospital, is too great a coincidence to be credible. I do not believe it.

Even Mrs. Harvey and Mr. Carter, who testified as to that resurgence, do not agree as to how it came about. Mrs. Harvey said she initiated it and spoke to Mr. Carter most forcefully to get on with the case. Mr. Carter testified it came about casually and incidentally to another matter he discussed with a police officer that day in his office.

Mr. Carter gave no explanation as to why he had concerned himself to make any note of that incidental and casual conversation. He had then, to his knowledge, no involvement with the case. I merely wonder as to of what he thought his notes would become part. Mr. Carter has no recollection of a specific conversation at about that time with Mrs. Harvey relative to his casual discussion with the police officer. I am sure that if Mrs. Harvey had spoken to him, as forcefully as she testified she had, he would have remembered.

The suggestion that Mr. Carter made notes for the Society's file on August 29, 1975 is not credible. At that time the entire file was composed only of the handwritten notes of Mrs. Dick and Mrs. Saul. The location of those notes is not known. Only those two workers and Mrs. Harvey and Mrs. Hoad had had any involvement in the case. Mr. Carter could not have found in the Society any record of the case even if he had looked for it. There was no evidence that he had looked. In addition, on his own evidence, he had, in May or June, 1975, been approached by Mrs. Hewitt in the mall about Kim. But he made no note of that discussion nor did he feel any need to make any inquiries within the Society about the matter. I am left to wonder why he says his attitude and actions were different on August 29, 1975 from what they were when Mrs. Hewitt spoke to him earlier. Clearly nothing had happened within the Society to cause him to change his attitude toward the case and his actions.

Mr. Carter acknowledged that the material transcribed in typewritten form is not as he would have written his note. The typewritten material under date August 29, 1975 is prepared in the third person, "H.R.C. had talked..." Also, in his view, it should have noted that Police Constable Gander spoke to him rather than that he spoke with Police Constable Gander. That may, at first blush, appear to be an exercise in semantics, but I think Mr. Carter was indicating that the initiative for the conversation lay with Police Constable Gander, that Mr. Carter had not sought out Police Constable Gander to elicit any information and that any conversation or discussion was quite casual in nature.

I note as well that the typewritten material refers to a report to be furnished by the Sarnia Police Force and concludes

"No report was received."

It seems obvious therefor that the material from which the typewritten transcript was made was prepared at some time after, perhaps a long time after August 29, 1975 when the promise to deliver such a report was allegedly made.

In fairness to Mr. Carter, while he professes to remember the conversation he allegedly had with Police Constable Gander, he relies on a personal diary and the typewritten record to establish the date of that conversation as being August 29, 1975. His original notes too have been destroyed. I have already commented upon the fallibility of those records. Even Mr. Carter's evidence demonstrates that fallibility.

I cannot and do not accept the evidence of Mrs. Harvey and Mr. Carter as to the resurgence of interest in Kim's case on August 29, 1975. I am not prepared to find that anything relative to Kim occurred within the Society on August 29, 1975.

Even prior to Kim's birth The Lambton Health Unit had been involved with her and her family. In August, 1974 Mrs. Kuly of that Unit had counselled Jennifer Popen on nutrition and general pre-natal care. This was after another nurse from The Lambton Health Unit had been sent to visit Jennifer Popen in hospital because of the report of her illness with an intestinal parasitic infestation during her pregnancy with Kim.

In February, 1975, Mrs. Kuly visited the Popen home in connection with Kim's birth and general care following the recommendation of another nurse from The Lambton Health Unit who had visited Jennifer Popen while she was in the hospital for Kim's birth.

Dr. Duncan, in the absence of any record of the reason for the recommendation that a nurse from The Lambton Health Unit visit the Popen home, opined that the recommendation was made because Jennifer Popen was such a young mother.

Dr. Duncan testified that on June 16, 1975, Dr. Jumeau telephoned her to report the possibility of Kim having been abused. She said Dr. Jumeau told her he had just examined Kim in his office and she had lacerations of the lip and multiple bruising. He told Dr. Duncan he had notified the Sarnia Police Force. His purpose in calling The Lambton Health Unit was that they be aware of the matter and perhaps visit the home. Dr. Duncan testified that Dr. Jumeau informed her that Jennifer Popen abused Kim in a

chain reaction when Annals Popen beat Jennifer Popen.

Dr. Duncan felt The Lambton Health Unit's role was one of education of the public and not one of supervision. She said if The Lambton Health Unit felt supervision was required for the welfare of the child The Lambton Health Unit would ask the Society to provide supervision. She testified that one of The Lambton Health Unit's goals was to establish a good relationship with those whom they visited. Another immediate goal would be to see Kim if the chance arose and perhaps to have the parents discuss the problem.

Mrs. Kuly said that on June 23, 1975, she visited the Popen home and both parents denied having abused Kim. The explanation given by them for the earlier broken arm was that Kim had fallen from a chair when straps were loosened. The explanation given by Jennifer Popen for Dr. Jumeau's report was that the matter was misreported to him by a relative who wanted Kim.

On June 23, 1975, Mrs. Kuly had only a brief look at Kim while she was sleeping. It was just enough to enable Mrs. Kuly to see Kim's face and head. She saw no sign of injury. She made no insistent effort to see Kim. It was the opinion of Dr. Duncan, her superior, that The Lambton Health Unit's personnel could not examine a child without the consent of the parents and indeed could not even enter the home against the parents' wishes.

Mrs. Kuly said she had made a very loose arrangement with the Society to report to them if she observed anything of significance. She felt she had made no such observation; so she made no report to the Society on her visit.

It seems that Mrs. Kuly was informed by Jennifer Popen on June 23, 1975 that one of the Society's workers was visiting the home regularly. If so, the information was wrong. On June 17, 1975 Mrs. Saul had spoken of an intent to visit, but by June 23, 1975 there had been no visit by the Society's personnel except that made on June 17, 1975.

Mrs. Betty Hewitt testified that in June, July or August 1975, she saw Kim with Jennifer Popen at a shopping mall. Mrs. Hewitt recognized Jennifer Popen from her prior attendances at St. Joseph's Hospital with Kim. She said that, out of curiosity and friendliness, she approached them and observed that Kim had black eyes and bruising around the face, but Jennifer Popen walked away without any conversation.

Mrs. Hewitt testified that she commented on that to Dr. Thorp within a day or two. She said Dr. Thorp agreed that he would speak to Dr. Jumean. Dr. Thorp's evidence was somewhat different. He said he had agreed to look into the matter if Dr. Jumean indicated to Mrs. Hewitt that he would not inquire into it. He said he was told by Mrs. Hewitt that she had spoken to Dr. Jumean and then was told by Dr. Jumean that Dr. Jumean had gone to the Popen home, but had been refused admission. Dr. Thorp said that during that conversation with Dr. Jumean he expressed his suspicions that the March 22, 1975 hospitalization of Kim involved abuse.

Dr. Jumean did not recollect any such conversation with Dr. Thorp, but denied that he had ever tried to go to the Popen home and been refused admission.

Dr. Jumean testified that as a result of his having seen Kim in June 1975 he was concerned and telephoned Jennifer Popen and asked her to come to his office. To use his words he wanted

"to find out what's going on."

He said that Jennifer Popen attended at his office three days after he had seen Kim with Fay Popen. He said he could not remember examining Kim's file before that visit and could not remember having then any prior indication of suspicion by anyone that Kim was the victim of abuse. His office records indicate a visit on June 19, 1975, but neither they nor his testimony upon the Inquiry are helpful in determining the nature of that visit or his observations at that time. It is not even clear that he saw Kim on June 19, 1975.

One is left to wonder why Dr. Jumean would not then have carefully reviewed Kim's file, and remember doing it, if he were truly concerned "to find out what's going on." There was material there to assist him in any such endeavour.

Thus again it seems that there were persons, Dr. Thorp, Dr. Jumean, Mrs. Hewitt and Mrs. Fay Popen, who apparently had ample basis on which to justify a report to a children's aid society or Crown attorney under section 41 of The Child Welfare Act before August 31, 1975. Again it seems to me that such failure, if failure it be, by those persons had only a minimal effect upon the development of the tragic story of Kim's life and death.

One may speculate as to what might have happened had any of those persons made such a report directly to a children's aid society or Crown attorney. That they did not possibly contributed to the forming of the second arc of the circle of tragedy which eventually ringed Kim and led to her death.

In fairness to Mrs. Hewitt, Mrs. Fay Popen and Dr. Thorp in this context, each of them reported the information to Dr. Jumean the family doctor. Such report was made directly to Dr. Jumean in the case of Mrs. Popen and Dr. Thorp and indirectly to him in the case of Mrs. Hewitt who had reported to Dr. Thorp. Thus any failure to report, if indeed there was such failure, is purely a technical rather than a moral failure.

But far and away more serious was the failure of the Society, from June 17 to August 31, 1975, to do more than send Mrs. Saul and Mrs. Hoad with Police Constable Gander to investigate the report which was transmitted to the Society by the Sarnia Police Force. That the Society failed to undertake any further investigation, even though Mrs. Harvey agreed with Mrs. Saul that the case would require long and intensive effort by the Society in co-operation with other agencies, such as The Lambton Health Unit, was probably one of the two major errors of oversight or judgement which resulted in Kim's death.

Thus was formed the third arc, and the first of two major arcs, of the circle of tragedy which eventually ringed Kim and led to her death.

Chapter VII

Significant Events in Kim's Life from August 31 to September 5, 1975

On Sunday, August 31, 1975, shortly after midnight, Kim was admitted to St. Joseph's Hospital.

In her testimony upon the Inquiry, Jennifer Popen acknowledged that she had caused the injuries to Kim which are discussed in this section. Again Jennifer Popen stated that Kim had fallen from her crib,

"but the arm wasn't caused by falling from the crib, but she did fell."

This admission related to the rib fractures as well as the more recent injuries. She said the broken arm came about as a result of something she had deliberately and knowingly done, but, in almost the same breath, she asserted that she had been truthful in her testimony in the Provincial Court (Family Division) of the County of Lambton, which hereafter in this Chapter shall be called simply the "Provincial Court", that Kim had fallen from her crib. That was in answer to Judge Nighswander's query about the broken arm and its cause. Upon the Inquiry, she said that was truthful evidence but

"I just didn't tell him what else had happened...I didn't get into detail, so I wouldn't call that lying because I didn't get into it."

She was typically evasive when asked if she had lied in response to another question by Judge Nighswander in the Provincial Court. She had told Judge Nighswander she had not seen certain injuries happen, but, in her testimony upon the Inquiry, she acknowledged she had seen them happen. When asked about the evident discrepancy and whether she had lied to Judge Nighswander she responded merely

"Well, I'm not sure I did there, because I didn't remember."

But Jennifer Popen did maintain that Annals Popen had hit Kim with a slipper on one occasion as described in the proceeding in the Provincial Court subsequent to discovery of Kim's injuries on August 31, 1975.

I should add that Jennifer Popen acknowledged that she misled Annals Popen as to the cause of various injuries which Kim had suffered to that time and that Annals Popen had believed her explanations for the injuries.

Jennifer Popen acknowledged that until her ultimate plea of guilty to the charge of manslaughter she told false "stories" to a number of people, including doctors, as to how Kim's injuries had been caused. All of the "stories" showed Jennifer Popen to be blameless.

On August 31, 1975 Kim was examined by Dr. Thorp who again, as on March 22, 1975, was covering for Dr. Jumeau and was present in the Hospital's Emergency Department. Dr. Thorp testified that Jennifer Popen on presenting Kim at the hospital reported that Kim had fallen from her crib during the morning of August 30, 1975 and later cried with pain, which resulted in Jennifer Popen bringing her to the hospital. He said Jennifer Popen further related that Kim had fallen from the same crib two or three days earlier and had injured her right elbow. He said Jennifer Popen also mentioned the injury leading to Kim's hospitalization on March 22, 1975.

Dr. Thorp said that when asked why she had not brought Kim to hospital earlier Jennifer Popen had said she had not felt Kim was injured until she began to cry.

Dr. Thorp found some bruising and hardening in the area of Kim's left elbow. At that time, perhaps because of lighting and other conditions, he found no bruises on her head or elsewhere on her body. On later examination he did see some bruises and a healing sore or scab in the middle of her upper lip.

Dr. Thorp made a diagnosis of right otitis media, infection of the middle ear, in addition to the injuries.

Dr. Thorp decided to admit Kim to hospital and was concerned about the possibility of child abuse. He determined to bring his concern to Dr. Jumean's attention again. In using the word "again" Dr. Thorp said specifically he had spoken to Dr. Jumean about the incident of Mrs. Hewitt's observation of Kim with black eyes in the shopping mall in the summer of 1975, and at the same time he had spoken about the earlier fracture of the left humerus in March, 1975.

Kim was X-rayed in the morning of August 31, 1975 and there was evidence of a fracture of the left elbow. Dr. McCrudden described it as a super-condylar fracture, that is a fracture of the lower end of the humerus within the elbow joint. He said the same X-ray demonstrated the healing of the original mid-shaft fracture of the same bone which was quite solid. That is the injury of March 22, 1975.

Upon seeing the results of the X-rays, Dr. Thorp arranged for Dr. Singh to examine Kim. Dr. Singh's examination revealed slight swelling and bruising of the left and right elbow region and slight bruises on the lower end of the tibia and fibula on both sides of the ankles. Both ankles were swollen, tender and bruised. There was a slight bruise over the left cheek. The left upper lip was slightly cracked and bleeding.

Dr. Singh said there was no tenderness or swelling or bruising of the left arm apparent to him during his physical examination of Kim, but X-rays revealed a fracture of the metaphysis of the left lower humerus.

Dr. Singh testified that further X-rays revealed fractures of the left 8th and 9th ribs in the mid-axillary line. He had not discovered that injury during his clinical examination of Kim and Jennifer Popen had not reported it to him. He said that on receiving the X-ray report he examined Kim again and found those ribs to be slightly swollen,

but not tender. That indicated to him that they may have been old fractures which had healed.

Dr. Singh was asked for his opinion as to how the various injuries noted on August 31 and September 1, 1975 might have been occasioned. In his opinion the bruising of the left cheek and the injury to the lip might have been caused by a fall or "externally by some other person or object." In his opinion "impact injury, or a strong violence or a strong force on the elbows (sic)" would have caused the fracture of the lower part of the left humerus. He said a fall from "a great height" might have caused the fracture, that is a fall from more than three or four feet. Dr. Singh opined that the lineal bruises on the ankles could be caused by someone grasping or holding the ankles tightly, that is with "a tremendous amount of pressure." Dr. Singh felt the fractures of the ribs could have been caused by a strong force or a fall, but his opinion was that no child of Kim's age could, of his or her own volition, have a fall to create such a fracture.

Dr. McCrudden testified that on September 1, 1975 several X-rays were taken. They were to be a long bone skeletal survey of Kim and a re-examination of the fracture of the left humerus. He said that coincidentally a portion of the left rib cage was demonstrated on the X-ray film. That portrayed healing fractures of the eighth and ninth ribs in the mid-axillary line, that is directly in the side. By reason of the amount of callus formation present Dr. McCrudden estimated that the fracture had occurred about three to four weeks earlier. As a result of that X-ray he had examined the chest X-ray performed on April 28, 1975 and found that it revealed no fracture of the ribs. Clearly whatever caused the fractures of the ribs occurred in July or early August. That may have been coincident with whatever event caused Kim's black eyes which Mrs. Hewitt saw in that shopping mall.

Again Mr. Khattab, the hospital social worker, was notified. He merely telephoned the Society and spoke with Mrs. Harvey on September 3, 1975. He advised her that Kim appeared to have been abused. He said Mrs. Harvey asked for something in writing. He said he had not been informed that the Society were already involved in the case; so he sent

a brief, almost form letter to the Society dated September 4, 1975 indicating that Kim was to be released from hospital on September 5, 1975 and

"may need some assistance after leaving hospital."

He enclosed a sheet which he said showed Kim's date of birth, information as to her admission to St. Joseph's Hospital on March 22, 1975 "with a fracture" and her admission again on April 22, 1975 "with black eyes plus" and her admission on August 31, 1975 "with fracture and bruises."

In that document, which is dated September 8, 1975, he wrote:

"this case requires deep investigation which we are sure you will conduct."

He also recorded that Jennifer Popen appeared to be

"very responsible but this is a matter the hospital doubts."

In his note he said:

"It is reported to this hospital by an outside source that the father beats the mother and the latter beats the child."

From all of that it is clear that Mr. Khattab was not aware of the instruction from Mrs. Dick to the hospital on August 31, 1975 that Kim was to be released from hospital only to the care of the Society. Thus it would seem that Mr. Khattab's note to the Society was indeed a "form" letter and was not the result of any investigative or other effort by him.

He also said he enclosed "a copy of the physician's report". I do not know the identity of the physician whose report he purported to enclose.

Mr. Khattab testified that a copy of Dr. Singh's report on Kim's discharge from hospital on September 5, 1975 was forwarded to the Society. That evidence seems to be based on the notation on that discharge summary that a copy was forwarded to

"Mr. Carter, Children's Aid Society". That report was not dictated until September 5, 1975; so it would seem would not have have been enclosed with Mr. Khattab's letter which he said was mailed on September 4, 1975 and which he said was intended by him to be received by Mrs. Harvey. He made no mention of Mr. Carter.

Mr. Khattab in his evidence indicated that involvement in Kim's case was his first experience with child abuse. He said that he had come from a culture which never heard of child abuse. With all due respect to Mr. Khattab I find that incredible.

On the strength of Dr. Bates' testimony I am satisfied that abuse of children is a world-wide phenomenon. What constitutes abuse of children within a society is determined by that society. Each society may view and treat what it recognizes as the phenomenon in its own way and with varying success.

It may be that what we in Canada regard as abuse of children is not so regarded in the culture from which Mr. Khattab comes, but surely he, as one professing to be a social worker educated, in part, in Canada and as one employed as a social worker in Canada, must be aware of the standards and attitudes of Canada and Canadian society generally in relation to the care of children.

Be that as it may, Mr. Khattab, for whatever reasons, was unable in March, 1975 to believe that any parent could abuse a child. That seems to me to be a naive, wholly idealistic and unrealistic approach for anyone who professes to be a "social worker". He said the formal courses he had taken would, subject only to his completing a thesis, have entitled him to a degree of Doctor of Philosophy in social work. He said none of those courses touched on the battered child. That too is an incredible statement.

Mr. Khattab testified that when he began his service at St. Joseph's Hospital in December, 1974 he had no information and knew nothing about the battered child syndrome and, as it was not his "speciality", he chose not to look into it. Again that is an incredible statement of position or

philosophy by one who held himself out to be a social worker.

When he was examined by the Inquiry's counsel Mr. Khattab seemed to me to waffle considerably. He said he was not advised in March, 1975 that Kim's was a case of "suspected child abuse." He said he chose to say that the case was referred to him "for child protection reason", but he did not explain what that meant to him or anyone else. I am satisfied it could mean only to protect the child from danger, neglect or abuse from whatever source.

The words "suspected child abuse" may not have been used in that juxtaposition, but had Mr. Khattab read the documents in Kim's file, particularly the request for consultation signed by Dr. Lota and Dr. Singh's handwritten and typewritten reports, he would have seen the symbols and words

"? batter baby syndrome"
and

"I would strongly suspect that the battered child syndrome is present."

Dr. Singh clearly indicated his suspicion that Kim required protection then to avoid further injury, including severe fractures. I do not know how anyone seeing those documents could not recognize that the doctors, especially Dr. Singh, were expressing a suspicion that Kim had been battered. Even in common usage a child who has been battered has been abused.

I should note that had Mr. Khattab been concerned as to the meaning of "battered baby syndrome" he needed to look no further than the Concise Oxford Dictionary. That work, under the word "batter", has the swung dash symbol followed by the letters and word "-ed baby" and the meaning given therefore is

"with symptoms of repeated violence by adults."

Other dictionaries may not be as direct and apt, but would certainly give meanings to be ascribed to the word "batter" which would include the application of violence by striking.

Even if the reference of the matter to him was merely to achieve protection for Kim, Mr. Khattab did nothing effective to provide that protection.

As to what was expected of Mr. Khattab on August 31, 1975 and thereafter is summed up in Dr. Singh's summary prepared on September 5, 1975, when Kim was discharged from hospital. Dr. Singh wrote, after a description of Kim's injuries:

"Pictures of these bruises were taken by the police. 3. Battered child Syndrome. Children's Aid Society and the police plus Mr. Khattab were informed about this and they are taking necessary procedures and investigations to find out the cause and the frequency of these fractures and bruises."

Again Mr. Khattab did not do as Dr. Singh expected. He did not take any procedure other than to telephone the Society and then to send them what I regard and classify as a form letter. He made no investigation to learn the cause and frequency of the fractures and bruises.

Even though in his statement to this Inquiry's investigator Mr. Khattab had said

"I was informed of Kim POPEN and the suspected Battered Child Syndrome"

he seemed to me to continue to waffle in his testimony and say that the fact of child abuse could be determined only by examination by a qualified medical practitioner and that bruises on a child might come from many sources. He overlooks that doctors had expressed concern and suspicion which were recorded in Kim's file at the hospital. He overlooked that he had been asked to investigate the environmental and social status of the Popen family. He was expected to do only that and to report to doctors. He was not asked to make the definitive determination that Kim was a victim of child abuse.

I felt all of what I have written about was a shallow defensive stance taken by Mr. Khattab to minimize his own responsibility. Clearly a social worker is not to be expected to make any medical

diagnosis or to express any opinion as to cause of any injury or any similar opinion that only a medical practitioner might be expected to make or express. Mr. Khattab was not asked to do any of that. He was asked merely to investigate the Popen family and household in relation to the care which Kim was receiving.

Mr. Khattab did acknowledge, in retrospect, that Jennifer Popen had "fooled" him and that if the situation which arose in March, 1975 were to arise again he should contact the Society at once.

As I have mentioned in Chapter V, Mr. Khattab went on to indicate some concern that he might have been sued in March, 1975 had he informed the Society of any suspicion of child abuse which he was "not sure of"; so he chose not to inform the Society "unless [he had] evidence." He denied that he had noted in Dr. Singh's report in March, 1975 any reference to the possibility of "battered child syndrome," although he said he had read the hospital charts on Kim. Mr. Khattab went on to say that, while his report to the Society on September 4, 1975 referred to Kim having been admitted to hospital on April 22, 1975, with black eyes, that was based solely on information given to him by Mrs. Mitchell, head nurse and was not accurate. I am left to wonder what he did read in March, 1975.

Mr. Khattab testified that he had not spoken to Jennifer Popen before reporting to the Society on September 3 and 4, 1975 because he decided he would not be fooled again. He testified that the mere fact that Kim had been admitted to hospital a second time was enough to warrant his reporting the matter to the Society.

It was Kim's second admission with a fracture of a bone, but it was her third admission to hospital. I doubt that Mr. Khattab's thought process was such as he suggested.

Mr. Khattab seems to have gone from a position of complete trust and naivete to one of complete incredulity and disbelief that a child might be admitted to hospital on two or more occasions for treatment of injuries suffered otherwise than from

abuse. In my view neither extreme position is correct and proper.

The doctors directed, by order on Kim's chart, that she was not to be released from hospital unless the doctor was called and the mother, Jennifer Popen, was not to be allowed to sign Kim out without notifying the doctor.

Mrs. Hewitt was Acting Head Nurse when Jennifer Popen came to St. Joseph's Hospital at about 2:10 o'clock in the afternoon of August 31, 1975 and stated her intention to take Kim home. Mrs. Hewitt testified that all nurses had been instructed to be alert to any visitors to Kim. Jennifer Popen did not try to remove Kim surreptitiously, but announced to Mrs. Hewitt her intent to take Kim home. Mrs. Hewitt objected on the basis that all tests had not been completed, but Jennifer Popen was insistent and stated that there was nothing wrong with Kim. The nursing staff arranged to keep Kim hidden from Jennifer Popen and in the meantime sought to reach doctors and supervisors to ascertain the legal position of the hospital insofar as it related to Kim's remaining in hospital.

As a result Dr. Thorp and Dr. Singh responded and telephone calls were placed to the Sarnia Police Force and the Society. Mrs. Dick responded on behalf of the Society and Police Constables Kennedy, Wyville and Turner on behalf of the Sarnia Police Force.

Police Constable Edward J. Kennedy was the first police officer to arrive. He saw Kim and described her as having been "badly battered" as shown in the photographs later taken by Police Constable Turner. He said that in his opinion

"...it wasn't an accident. Something deliberate had happened to that child...."

He based that opinion on the variety of injuries on various parts of Kim's body.

In the light of Mr. Khattab's professed difficulty with the words "child abuse" and "battered baby" Police Constable Kennedy's use of the adjective

"battered" is significant to show that the expressions are not esoteric.

Police Constable Kennedy was present when Police Constable Wyville interviewed Jennifer Popen. He described Jennifer Popen as being very solemn and hostile. He said she kept saying that Kim was continuously falling from her crib.

Police Constable Wyville was the next to arrive in response to the telephone calls from the hospital. He arrived at the hospital about 3:10 in the afternoon. He said that Mrs. Hewitt told him that doctors felt Kim was a battered child. He said she expressed concern that the parents would remove Kim from hospital against her wishes. He spoke with Dr. Thorp and Dr. Singh who expressed their opinions that Kim was a battered or misused child or both. He too identified the photographs as being of Kim and as depicting the injuries which were apparent to him. They were injuries to both arms, ankles, left cheek and upper lip.

Police Constable Ronald J. Turner was the police photographer who took the photographs and he described them as having been taken to show the injuries which were apparent.

Police Constable Wyville assumed responsibility for the investigation. He spoke with Jennifer Popen and Annals Popen, but felt a degree of frustration in that discussion. He said that even if he directed a question to Annals Popen, Annals Popen would not respond unless Jennifer Popen indicated that it was in order for him to do so. He said Jennifer Popen was definitely the spokesman for them. He said she continually stated that Kim was very active and tended to fall from her crib or from dresser drawers and that that was how she had suffered the various injuries.

Police Constable Wyville too described Jennifer Popen as being quite hostile, resentful and unco-operative.

Police Constable Wyville spoke by telephone with Mrs. Dick of the Society who arrived very shortly thereafter. It was agreed that Mrs. Dick and

medical personnel would speak with the parents without any police officer being present.

Police Constable Wyville later, having been informed by Mrs. Dick that the parents had signed a document giving the Society the right to take custody of Kim and thus having been satisfied that Kim was in the care of the Society, told both parents that the police would investigate the matter and that charges under The Child Welfare Act or the Criminal Code might be laid.

Mrs. Dick's evidence corroborated Police Constable Wyville as to his having telephoned her to request her to come to the hospital and to inform her of Kim's admission to hospital, the belief of the police and medical personnel that she had been abused, Jennifer Popen's desire to remove her from hospital and the resulting disturbance at the hospital. She said she responded immediately to Police Constable Wyville's call.

She said that on her arrival she saw all whom I have mentioned except Annals Popen, who apparently had not come with Jennifer Popen, but who was expected to arrive in response to a telephone call from Jennifer Popen.

Mrs. Dick described Jennifer Popen as stiff and withdrawn rather than hostile. She said Jennifer Popen appeared to be calm, but determined that until Annals Popen arrived she would say no more than to assert that Kim had fallen from the crib. She said that Kim had pulled herself from the crib onto the dresser and had fallen to the floor. I would contrast that statement by Jennifer Popen with Dr. Singh's testimony that a child of Kim's age would be unable to place herself in such a position of danger.

At this stage Mrs. Dick was aware only that Kim suffered bruising to both elbows and both legs in the area of her ankles. She was aware that X-rays had been taken, but she did not know what they showed. She was aware that the doctors were of the opinion that Kim's injuries did not appear to be such as would be caused in the manner Jennifer Popen indicated and that there was the possibility that Kim had been abused.

Mrs. Dick said that the responses made by Jennifer Popen did not appear to be a satisfactory explanation of Kim's injuries. Mrs. Dick said she then felt that Jennifer Popen was not being completely truthful. I regard that as an understatement.

Mrs. Dick said that when Annals Popen arrived and learned that Jennifer Popen had tried to remove Kim from hospital he expressed his displeasure and said that he had told her not to do that.

Mrs. Dick said that when asked how Kim had been injured Annals Popen replied that he could only go by what Jennifer Popen had told him. He said that Jennifer Popen told him that she had found Kim on the floor. This is another instance of Annals Popen's willingness to accept or believe what Jennifer Popen told him.

Mrs. Dick said Jennifer Popen then altered her explanation of Kim's injuries to say that she had not seen Kim fall, but had found her on the floor and had reached certain conclusions as to how she got there.

Mrs. Dick went on to say that Annals Popen's position was that he had not injured Kim and no one could take her from him.

Mrs. Dick was able to persuade both parents that in view of the lack of satisfactory explanation for Kim's injuries there could be no guarantee that she would not suffer further injury if removed from hospital to the family home.

Mrs. Dick testified that she was not then forming any opinion as to how Kim had been injured, but she wanted to ensure that Kim was not exposed to any further danger during the investigation of her injuries and the cause thereof.

Mrs. Dick understood that the Sarnia Police Force would continue their investigation and she intended to ensure that the Society also investigated.

Accordingly, particularly on learning the results of certain X-rays and on being told of Kim's

hospitalization in March, 1975, Mrs. Dick determined to take Kim into the care of the Society. This was especially to ensure that Kim remained in hospital as long as necessary for treatment of her injuries. She had also noted that Annals Popen was unable to dissuade Jennifer Popen from her stated intention to remove Kim from hospital; thus she felt that the adequacy of the parents' behaviour towards Kim could not be ensured.

In the hospital Mrs. Dick was informed by Mrs. Hewitt that Kim had been taken to the Sarnia General Hospital the evening or night of August 29, 1975, because she had fallen from her crib, but was not admitted and Jennifer Popen was asked to bring Kim to that hospital for X-ray on August 30, 1975. Mrs. Dick understood that Kim was taken to St. Joseph's Hospital on August 31, 1975 because of another fall. The incidence of two falls was a factor in Mrs. Dick's assessment of the situation on August 31, 1975.

The consultation form signed by Dr. Thorp on August 31, 1975 supports the concept of two separate falls and two separate injuries. It reads:

"Story of fall. Lt. elbow 30th A.M. Rt. elbow 3 days before. No medical help sought until midnight 30th."

Presumably that was based on information given to him by Jennifer Popen.

Jennifer Popen's evidence upon the Inquiry was that she had taken Kim directly from Sarnia General Hospital to St. Joseph's Hospital for a more thorough examination. I am prepared to accept that Jennifer Popen took Kim to Sarnia General Hospital and thence to St. Joseph's Hospital. But I am not prepared to accept Jennifer Popen's evidence as to why she chose to go to St. Joseph's Hospital.

I think the possible error in Mrs. Dick's understanding comes about because the appearance at St. Joseph's Hospital was just after midnight of August 30/31, 1975. In addition her understanding was based on information from Jennifer Popen, hardly a reliable source of clear information.

Mrs. Dick testified that she spoke with Annals Popen and Jennifer Popen about the visit to Sarnia General Hospital. She said Jennifer Popen told her she chose not to return there for X-ray as requested because in her view,

"the child was fine and didn't need to go."

I contrast that with Jennifer Popen's evidence upon the Inquiry, as noted in a preceding paragraph, that Kim was taken to St. Joseph's Hospital for a more thorough examination. I contrast it also with the injuries which were found when Kim was examined and X-rayed. Kim certainly was not "fine" and she needed medical care, including hospitalization.

Mrs. Dick testified that in conversation with Annals Popen and Jennifer Popen at St. Joseph's Hospital on August 31, 1975 she discussed alternatives for the resolution of the matter that day. One was that Kim would immediately come into the care of the Society by unilateral action by the Society and the Society would immediately apply to the Provincial Court for wardship of Kim. In the alternative, while it pursued its investigation, the Society would take Kim into its care on a one-month non-ward agreement to be signed by the parents.

Mrs. Dick described the document referred to in that second alternative procedure as the parents' consent to the Society taking Kim into its care without any court order.

Mrs. Dick said that she explained to the parents that, regardless of the alternative they selected, Kim would be a ward of the Society and would be discharged to the Society from hospital when treatment of her injuries was completed.

Mrs. Dick testified that she did this to achieve an immediately peaceful solution and hopefully to obtain the co-operation of Annals Popen and Jennifer Popen in the future and to give police and the Society's investigators time to perform their functions.

Mrs. Dick testified that she suggested and Jennifer Popen and Annals Popen agreed to complete a non-ward agreement. Mrs. Dick testified that she had

explained to them that that agreement could be cancelled either by them or by the Society during its stated term of one month and that, the agreement notwithstanding, the Society might begin proceedings in court at any time, if it chose.

Mrs. Dick testified that the parents also signed consents addressed to the hospital and to Dr. Jumeau authorizing the release to the Society of medical information relating to Kim.

Mrs. Dick testified that she was informed that in connection with Kim's hospitalization in March, 1975 Jennifer Popen had claimed that Kim had fallen while in the care of a sitter who had abused Kim, but, on August 31, 1975, Jennifer Popen acknowledged to Mrs. Dick that her allegation against the sitter was false. Mrs. Dick said such changes in stories made her suspicious of Jennifer Popen.

Mrs. Dick testified that she also spoke to Jennifer Popen and Annals Popen about the incident Mrs. Hewitt described in which, she said, she had seen Jennifer Popen in a shopping mall and Kim had black eyes. She said the parents denied that Kim had black eyes.

I am satisfied that Mrs. Hewitt did see Kim as she described. I am unable to determine exactly when that was.

Mrs. Dick testified that, to her, an interesting fact was that the parents refused to have Dr. Jumeau involved with Kim on August 31, 1975. She said they gave no reason for that refusal.

Mrs. Dick testified that the parents seemed to show little concern for Kim's injuries, but were more concerned about the possibility of her being removed from them. She said they accepted the conditions she imposed upon their visits to Kim in hospital.

Mrs. Dick said she informed the hospital staff that Kim was now in the care of the Society and was not to be released from hospital except to the Society.

Some criticism of Mrs. Dick's use of the non-ward agreement was voiced by Dr. Francis Joseph Turner, who was an expert witness upon the Inquiry. He had some concern that execution of that document by Annals Popen and Jennifer Popen may not have been a totally voluntary act by them. But Dr. Turner was understanding of Mrs. Dick's position. That Kim's safety was secured was, to him, a satisfactory temporary resolution of the matter.

Dr. Turner however then went on to express criticism that the Society did not move forcefully and quickly for an order of wardship of Kim. That order was not obtained until February 25, 1976, almost six months after Kim first came into the care of the Society.

Mrs. Dick did immediately prepare a Record of Inquiry in her own handwriting, setting forth, on the first page thereof, some of the particulars of Kim and her parents. On two succeeding pages Mrs. Dick reviewed the events to which she was party on August 31, 1975 and information which she was then given from whatever source. Those pages now are part of the Society's file. They have been reduced to about one and one-half typewritten pages to which have been added several pages of typewritten notations purporting to reflect the handling of Kim's case by workers in the Family Services Department of the Society. They include the belated recordings of the events of June 17, 1975 and two notations dated June 19 and August 29, 1975 respectively. They include further entries to June 29, 1977 with reference to Kim's younger brother, Karie, who was born July 6, 1976.

In that regard I cannot help but note that included in those latter recordings is one by Mrs. Shirley Lo under date of May 6, 1976. It begins with the sentence,

"The Popen's second baby is due on July 6/76."

I wonder was that recording written long after the date ascribed to it or was it another instance of accurate prophecy, happier than the instances of prophecy I have noted earlier. I incline to the

former view. I think the recording was written long after May 6, 1976, even after July 6, 1976.

Jennifer Popen's testimony was that she entered hospital on July 6, 1976 for the baby's birth. Deborah Ginn, a young high school student who had agreed to baby-sit for the Popens while Jennifer Popen was in hospital, testified that she had been called, by telephone, at about 2:45 a.m. on July 6, 1976 to come to the Popen home because Jennifer Popen was leaving for the hospital. I gathered that Miss Ginn was not aware that July 6, 1976 was as certainly expected as the date of birth as the Society's records would indicate.

Mrs. Dick's handwritten notes make it clear that on August 31, 1975 the Society, at least through Mrs. Dick and those who would then have access to the file begun with those notes on the Record of Inquiry was aware of the following facts, allegations and suspicions:

- 1) that the Sarnia Police Force was involved and concerned as to the possibility that Kim had been abused and Police Constable Wyville was a responsible police officer who might be contacted by the Society;
- 2) that Dr. Jumeau was the family doctor, but there was a suggestion that Jennifer Popen did not want him to see Kim;
- 3) that Kim had been observed in the mall with black eyes, an observation which had been reported to Dr. Jumeau who supposedly had contacted Jennifer Popen, but with then unknown results;
- 4) that Jennifer Popen alleged Kim could pull herself out of her crib and that thus Kim had fallen on August 29 and again on August 30, 1975. While Dr. Singh's written reports do not set forth the information, I presume that some, at least, of the Society's personnel would be aware that, as Dr. Singh testified upon the Inquiry:

"Eight-month old babies are unable to stand up, or at least barely standing up, they're unable to definitely hold and stand up or climb out at that age...An 8-month old

baby can barely stand up with support; it's impossible for an 8-month old baby to climb out of a crib and fall down to injure her elbows and other fractures which I have described.";

- 5) that before taking Kim to hospital in the early morning hours of August 31, 1975, Jennifer Popen had allegedly taken Kim to Sarnia General Hospital, but chose not to return there for X-rays as requested;
- 6) that both Dr. Singh and Dr. Thorp had observed Kim and concurred that her injuries were not such as might be expected to have been caused by falling and had strongly indicated that Kim had been abused;
- 7) that other hospital personnel suspected Kim had been abused;
- 8) that Kim's arm had been broken on an earlier occasion, supposedly by falling or by abuse from a baby sitter, but Jennifer Popen now withdrew the allegation as to abuse by the baby sitter; and
- 9) that there were some differences of opinion between Annals Popen and Jennifer Popen as to Kim's care, particularly as to her remaining in hospital, but both denied any abuse of Kim.

As that Record of Inquiry indicates, the file was opened "statistically only", to use Mr. Carter's words, as of August 31, 1975 and responsibility for it was assigned to "H.R.C.", Mr. Carter. I am satisfied that that assignment to Mr. Carter was effectively made on or shortly after September 2, 1975, the first business day after the Labour Day weekend.

The first and only group of paragraphs of that recording, attributed to Mr. Carter and acknowledged by him as being substantially of his composition, covers the period from September 1, 1975 to February 29, 1976 and appears to have been typed on or after February 29, 1976.

Thus, for six months or more there was no recording available to indicate to anyone how

Mr. Carter was managing the case, what he was doing, what he hoped to achieve, where he had succeeded, where he had failed, what his assessment of it all was. That seems to me to be an inordinately long period of time, particularly at the beginning of a serious case, expected to require service by the Society over an extended period of time, to be covered by one session of recording. One is left to wonder when the entry might have been made if the case had not been transferred to Mrs. Lo in February, 1976.

Kim was released from hospital, into the care of the Society, on September 5, 1975.

Its records do not reflect that the Society did anything whatsoever with reference to Kim during the period from August 31 to September 5, 1975 while she was in hospital, but Mr. Carter testified that he spoke with Police Constables Charlton and Wyville on September 2, 1975. He said they were investigating Kim's injuries and sought Mr. Carter's assistance in arranging separate interviews with her parents on September 3, 1975.

It is of interest to me to note that again the initiative for contact and co-operation flowed from the Sarnia Police Force and not the Society. I would have expected that the Society, primarily responsible for Kim's protection, and for the investigation of the allegation that she had been abused, would have sought out other community resources, including the Sarnia Police Force.

Mr. Carter testified that he arranged for Jennifer Popen and Annals Popen to come to the Society's office on September 3, 1975 where he arranged for them to be separated so that they might be interviewed separately by Constables Charlton and Wyville.

Mr. Carter also said that on September 3, 1975, Mrs. Kirby, a child care worker in the Society, interviewed Jennifer Popen to ascertain certain information with reference to Kim's care and feeding.

Police Constable Wyville testified that he interviewed Jennifer Popen and Annals Popen at the

Society's office on September 4, 1975. He acknowledged that he was unsure of the date, but he said the interview was quite unproductive. He felt Annals Popen was constrained in his responses by Jennifer Popen's domination. He said Jennifer Popen persisted in her explanation that Kim had been injured by falling from her crib and the dresser. I note that this was in spite of the fact that Jennifer Popen had, on August 31, 1975, acknowledged to Mrs. Dick that she had not seen Kim fall, but had merely found her on the floor and, from that, arrived at a conclusion as to how she fell. Police Constable Wyville had not at that time obtained all relevant medical reports and histories.

Chapter VIII

Significant Events in Kim's Life from September 5, 1975 to February 25, 1976

During this period Kim was released from hospital to the care of the Society under the personal supervision of Mrs. Mary I. Kirby.

The recordings prepared by Mrs. Kirby form part of the file maintained by the Children's Services Department of the Society. They appear to be detailed and thorough.

Mrs. Kirby's recordings describe Kim as being petite, with a well-developed frame. Reference is made to the injuries to her left elbow and ribs and to "red buttocks and perineum", which I believe to be "diaper rash" in a layman's terms.

Kim remained in the first foster home selected by the Society only until September 10, 1975 when she was transferred to the home of Mr. and Mrs. Adrian Cecile where she remained until her return to her family's home on May 27, 1976. The transfer was made only because the first foster home was too near to Kim's family home.

Mrs. Kirby is a registered nurse who, after several years of nursing, took a two year diploma course in social work and became a social worker with the Society in September 1974. In 1975 and 1976 she worked in the Child Care or Children's Services Department of the Society.

Mrs. Kirby became aware of Kim's case when Mr. Carter requested her to pick Kim up from the hospital on September 5, 1975. Mrs. Kirby complied with that request and placed Kim in the first foster home.

It would seem that the selection of that foster home had not been too carefully considered. Within a few days it was decided that Kim should be moved. In Mrs. Kirby's words it was

"in the best interests of the child and the foster parents as well as the natural parents."

Apparently the first foster home was so situated that the natural parents might accidentally encounter Kim and the foster parents.

I do not recall any evidence as to who was responsible for the selection of the first foster home. It was a decision of the Society as represented by one or more of its employees. Thus it was the responsibility of the Society.

I do not suggest that the selection of the first foster home in any way derogated from Kim's care as a ward of the Society. But it would seem to me to be indicative of practices within the Society which, most charitably, might be described as careless or sloppy. One might reasonably ask why whoever in the Society made and approved Kim's original placement in a foster home had not first ascertained the physical location of that foster home in relation to that of the home of Kim's natural parents.

I am not in any way to be taken to be suggesting that this original placement in a foster home had any effect upon the eventual and ultimate tragedy. I wonder was it perhaps symptomatic of the ills that beset the Society that so apparently simple a task as selection of the location of a foster home could not have been accomplished without the complication of corrective action within five days solely because of the proximity of the foster home to that of the natural parents.

Mrs. Kirby testified that on September 5, 1975, Kim's left elbow was apparently the main area of concern as to her injuries. Other bruises were faint, but obviously had been much worse.

She said that Kim's first visit with her parents after her release from hospital occurred at the Society's offices on September 11, 1975. She said that Jennifer Popen seemed to evince anger towards the Society for having Kim in its care. She said this was demonstrated when she cautioned Jennifer Popen to be careful of Kim's elbow.

Mrs. Kirby cut that visit short because Kim was upset. Apparently that upset was because of the actions of Annals Popen and Jennifer Popen which Mrs. Kirby said were "a little unusual."

Thus again there was given to the Society a signal of possible danger to Kim, a signal of possible abuse. It was the same signal that Mrs. Saul had perceived on June 17, 1975. Then it was Kim's reaction to her mother. This time, it was Jennifer Popen's attitude and the way in which Kim was handled by her parents.

Mrs. Kirby testified that thereafter Kim visited with her parents at intervals of about two weeks and the visits went well. As to the visit on November 25, 1975 the record prepared by Mrs. Kirby notes

"Parents appeared to be in a hostile mood initially but this appeared to fade by the end of the visit."

Mrs. Kirby testified that the hostility was not directed towards Kim nor did it have anything to do with her and

"it must have been some antagonism going on between the two parents."

Thus on November 25, 1975, the Society had some further indication that all might not be well in the relationship between Annals Popen and Jennifer Popen. That should have been of concern to the Society in its development of plans for Kim's future. There was no testimony to suggest that that opinion formed by Mrs. Kirby had been communicated in any way to anyone else within the Society.

Mrs. Kirby did not regard as in any way unusual Kim's behaviour as it was reported to her by the foster parents. The foster parents reported that Kim appeared to regress in her behaviour and attitude and to have sleepless nights after the visits with her parents.

Mrs. Kirby's observation of Kim led her to believe that Kim had been emotionally or physically deprived prior to being taken into care. Mrs. Kirby

based this on Kim's lack of development in such areas as ability to play with others, an ability she developed within about two months of her introduction to the foster home, and on Kim's great hunger for food when first placed in the foster home a hunger which gradually dwindled.

Mrs. Cecile, in whose home Kim resided from September 10, 1975 to May 26, 1976, said Kim was

"scared. She didn't like people. She was mean."

when she came into the Cecile home. Mrs. Cecile said that by January, 1976 she noted a gradual change in Kim's behaviour. By then she would sit on someone's knee if only for a short time.

Thus, in September 1975 the Society was aware of the possibility that Kim was deprived of some element of proper or appropriate care in her parental home. That should have been of concern to the Society in its development of plans for Kim's future. There was no testimony that anyone in the Society other than perhaps Mrs. Kirby, was aware of Mrs. Cecile's observations and assessment.

On September 12, 1975, the day following Kim's first visit with her parents after her release from hospital, Jennifer Popen visited The Lambton Health Unit. She requested a letter for her lawyer to indicate that she took good care of Kim who had been removed by the Society. She later telephoned Mrs. Kuly and repeated the request. It was denied by Mrs. Kuly on the direction of Dr. Duncan. Mrs. Kuly informed Jennifer Popen that The Lambton Health Unit could not become involved because the time Mrs. Kuly had spent in the home would not enable her to vouch for the standard of care given to Kim.

Dr. Duncan testified that in Dr. Jumeau's earlier report to her, the telephone call on June 16, 1975, he told her that Jennifer Popen beat Kim because Annals Popen beat Jennifer Popen when he was drunk. Dr. Duncan said that therefore The Lambton Health Unit could not truthfully have written a letter such as Jennifer Popen sought. In any event Dr. Duncan did not feel it was the responsibility of The Lambton Health Unit to provide such a letter.

In retrospect Dr. Duncan's view, as expressed in her testimony, was that if such a letter be requested by anyone in the future The Lambton Health Unit should respond in some way to such a request and not merely remain silent. She said that, if The Lambton Health Unit thinks it appropriate, it should write to the Society to state that its opinion is that the child should not be returned to the parents.

Thus, in retrospect, it would seem The Lambton Health Unit erred in not formally and in writing advising the Society of Jennifer Popen's request and the view which The Lambton Health Unit took of the request and the rationale of such view. Had that been done in Kim's case the Society, if it thought it necessary or advisable to do so, could have called someone from The Lambton Health Unit to testify upon the Society's application in respect of Kim.

Again it is my view that such error or omission by The Lambton Health Unit had little, if any, effect upon the long-range development of the ultimate tragedy. It perhaps indicates a lack of complete co-operation and exchange of information and views by and between two public or quasi-public organizations each dealing with the same people but approaching the people and the problem with different concerns, different skills and different aims.

Mrs. Kuly did speak with Mr. Carter at the Society to inform him of Jennifer Popen's request. He then advised Mrs. Kuly of Kim's hospitalization and release to the care of the Society and the pending charges of abuse against the parents.

Mrs. Kuly visited the Popen home again on September 17, 1975 to seek to establish or maintain a working relationship with Jennifer Popen and with an eye to the possible need of The Lambton Health Unit involvement to assist the family in the future, possibly in the event Kim were returned to her parents.

The Lambton Health Unit and Mrs. Kuly had no further involvement with Kim's case during this period, save and except to attend court as required in October, 1975 and January, 1976 by a subpoena

delivered by counsel for the parents. On February 18, 1976 Mrs. Kuly received a letter from Mr. Higgins advising her that the matter was adjourned indefinitely and her appearance was not required.

There is no indication that the Society in preparing for the hearing of its application had any contact with The Lambton Health Unit to see if that Unit had any information that might be of use upon the hearing.

In December, 1975 the foster parents reported and Mrs. Kirby noted some problems with Kim after visiting with her parents. Mrs. Cecile testified that when Kim returned from visiting with her parents she reverted to the child she was when first, on September 10, 1975, placed as a foster child in the Cecile home. To use Mrs. Cecile's words she was "mean" and "hostile" and would "stay awake all night screaming" after each visit with her parents.

Mrs. Cecile testified that this manifestation of Kim's behaviour continued even beyond the period dealt with in this chapter and up until the time Kim was returned to her parents. Mrs. Kirby was unsure of the cause of those problems.

Again in January, 1976 Mrs. Kirby noticed a coolness between Annals Popen and Jennifer Popen. She also noted that Jennifer Popen appeared distant from Kim and refused to dress Kim, but was persuaded finally to put Kim's coat and hat on her. Mrs. Kirby felt this might have been caused by the adjournment of court proceedings and the dashing of the parents' hopes that Kim would be returned to them then. Mrs. Kirby felt that Jennifer Popen's cold behaviour toward Kim was inconsistent with her professed desire to have Kim returned and was an indication of Jennifer Popen's immaturity.

Thus again, in January, 1976, the Society had some indication that all might not be well in the Popen household and particularly that Jennifer Popen might not be able properly to care for Kim and that her professed desire for Kim's return was a sham or deceit conceived by Jennifer Popen for some reason of her own.

Mrs. Kirby recorded only the coolness of the parents. She did not record any other observation. She did not record any assessment. There was no testimony that anyone else in the Society was aware of what Mrs. Kirby had observed or of her assessment thereof.

Mrs. Kirby testified that the first indication she had that Kim was to be returned to her parents' home was on February 19, 1976. She said this occurred when Police Constable Wyville and Charlton of the Sarnia Police Force came to the Society's office to speak to Mr. Carter. She said there was then a discussion about the development of the proceedings in the Provincial Court (Family Division) of the County of Lambton wherein Annals Popen was expected to enter a plea of guilty to the charge laid under section 40 of The Child Welfare Act and the same charge against Jennifer Popen was expected to be withdrawn.

Mrs. Kirby testified that that proposed development caused a great deal of concern to Mr. Carter. That concern related to the effect that that development might have upon the Society's application for wardship of Kim. Mr. Carter testified upon the Inquiry that he expressed his concern to Police Constable Wyville. He had believed that the charge against the parents had been under the Criminal Code not The Child Welfare Act. That would seem to indicate that either Mr. Carter had not inquired of Police Constable Wyville about the charge or else was unaware of the provisions of The Child Welfare Act.

Mrs. Kirby testified that, as a result of that discussion they, that is Police Constables Wyville and Charlton and Mr. Carter and Mrs. Kirby, immediately spoke to Mrs. Harvey to inform her of the situation and to express Mr. Carter's concern.

Mrs. Kirby testified that Mrs. Harvey's response was to the effect that:

"she had the feeling that she would send maybe the child [Kim] back home before the court hearing."

Mrs. Kirby testified that that comment brought from Police Constable Wyville the statement that:

"he felt if she [Mrs. Harvey] did that that the child would be dead in three months."

Mrs. Kirby testified that Police Constable Charlton, Mr. Carter and she also voiced strong opposition to the plan to return Kim to her home then. Mrs. Kirby's objection was based on concern over the possibility of undue disruption for Kim who was just then beginning to have a normal routine within the foster home.

As Mrs. Kirby put it in her testimony:

"I felt that now this would be too soon to send the child back because she just hadn't had enough time to really have enough stability before we make another move because moves always disrupt the children and they do regress and I felt that this was just too soon."

Mrs. Harvey's testimony as to that whole discussion was that she remembered the occasion, but she did not remember what she or Police Constable Wyville had said. Mrs. Harvey testified that she had no plans to return Kim at that time, but did plan to return her eventually. She said that plan began as a "working hypothesis" and

"apparently at some point [she] made the decision that it would be worthwhile trying it."

She thought that decision was made prior to February 27, 1976 and was based on reports she had received from the Society's workers and others.

When asked about those reports, which she said had come from Mrs. Kirby, Mr. Carter and Police Constable Wyville, Mrs. Harvey acknowledged that there was not anything particularly positive in any of them.

It is significant that all of those supposed sources of her information faced Mrs. Harvey on February 29, 1976 and expressed strong opposition to any plan to return Kim to her parents' home.

I would think a more truthful or complete answer would have been to the effect that until February 25, 1976 there was nothing positive in the reports if indeed there were any reports to Mrs. Harvey.

Mr. Carter had not been able, in his view, to carry out his tasks and had not dictated anything for the file. On February 19, 1976 he voiced his opposition to the proposal that Kim be returned to her home.

There was no evidence of any report from the Sarnia Police Force to the Society, particularly to Mrs. Harvey, prior to February 19, 1976 when Police Constable Wyville expressed opposition to the proposal.

Mrs. Kirby had made recordings in the file. They expressed concerns. I have noted some of them. On February 19, 1976 Mrs. Kirby voiced opposition to the proposal.

I had the impression that Mrs. Harvey applied her own views or philosophy in the hope that the Popen family unit could be re-established and Kim and as yet unborn children could be protected if the parents learned how to raise them.

Mrs. Harvey acknowledged that she made that decision alone. She said she could not recall Mrs. Kirby having voiced any opposition to Kim's return home, but said she imagined that Mrs. Kirby would have been opposed to it. I think it was more than her imagination. I accept Mrs. Kirby's testimony as to the events of February 19, 1976 and her expression of her opposition.

Mrs. Harvey said Mr. Carter had not stated to her his opposition to Kim being returned to her home, but she understood he did not wish her to be returned in February 1976. I think it was more than her understanding. I accept Mrs. Kirby's testimony as to the events of February 19, 1976 and Mr. Carter's expression of his opposition.

Mrs. Harvey testified that by February, 1976, she was committed to returning Kim, provided

some goals set by the Society were achieved. She said those goals were particularly:

"an improved relationship between the parents, better child care techniques and a relationship established between [the Society] and the family."

None of those goals are recorded in the files of the Society. Mrs. Harvey did not state by whom or when and how they were established.

She said that at the conclusion of the hearing of the Society's application she met with Annals Popen and Jennifer Popen and Mr. Higgins, their solicitor, to discuss her expectations of them. Those expectations included their attendance at some course, not then defined, to be provided by the Society, Annals Popen's continued attendance at Alcoholics Anonymous and their co-operation with the Society. She believed she would have indicated to them that if those expectations were met there would be hope that Kim might be returned to them.

Mrs. Kirby testified that within the Society the decision as to whether or not Kim was to be returned to her home was the responsibility of the Family Services Department of which Mrs. Harvey was Supervisor.

Mr. Carter testified that during the meeting with Mrs. Harvey on February 19, 1976 it seemed to him that Mrs. Harvey had decided by then that Kim would eventually be returned to her parents.

On all of the evidence I heard I share that view and can only wonder, as others who testified upon the Inquiry wondered, as to the basis of information or belief on which Mrs. Harvey made that decision particularly in the absence of the contact that Mr. Carter might ordinarily have been expected to have had with the parents. Mrs. Harvey herself had had only slight contact with them, mainly in the courtroom and waiting room of the courthouse.

There was no indication that any of the concerns of Mrs. Kirby and Mr. Carter were brought to the attention of Mr. Lovatt or that he evinced any particular interest in Kim's case.

It should be noted that on October 16, 1975 an information was laid by Police Constable Wyville of the Sarnia Police Force after consultation with the Crown Attorney.

Because of possible difficulty in proving who had actually inflicted the injuries upon Kim, which the Sarnia Police Force and the Crown Attorney felt it would be necessary to prove in the event a charge of assault were laid under the Criminal Code, the Crown Attorney recommended that the parents be charged under section 40 of The Child Welfare Act. That advice was eminently sound.

The information alleged that Jennifer Popen and Annals Popen, having the custody of Kim, unlawfully failed to protect her contrary to section 40(1) of The Child Welfare Act.

By summons served on October 22, 1975 that information was made returnable in provincial court on October 30, 1975. The division of that court was not stated on the summons, but reference was made to a courtroom in which a judge of the provincial court (criminal division) presides.

Prior to the laying of that information, the Society began, by an application to the Provincial Court (Family Division) of the County of Lambton on September 8, 1975, proceedings under The Child Welfare Act seeking an order declaring Kim to be a child in need of protection under the The Child Welfare Act and making her a ward of and committing her to the care and custody of the Society.

I set forth now a summary of the various court proceedings. I shall call the Provincial Court (Family Division) of the County of Lambton simply the "Court":

On September 8, 1975, Mr. Lovatt, Mr. Carter and Mrs. Harvey, on behalf of the Society, and Mr. Ian Harvey of Mr. Higgins' office, on behalf of Jennifer Popen and Annals Popen, appeared upon the Society's application in Court.

At that time it was indicated to the Court that the parents would oppose the application and

that the Society was seeking an order making Kim a ward of the Society for six months.

Mr. Lovatt asked for an adjournment so that both parties might prepare. Thus Mr. Lovatt did at that time have some involvement with Kim's case and some knowledge of it. He should have known that it was a serious case and that it might require some careful or special management.

Mrs. Harvey, in her evidence upon the Inquiry, said time was needed by the Society to do all the work necessary in preparation for the hearing. She said that this was the usual routine, but the case had to be in Court to meet the requirements of The Child Welfare Act.

Mr. Carter stated in Court that three doctors would be involved and one was then on vacation for one month.

Judge Nighswander then explored with the parties the time that might be required for the hearing. Mr. Lovatt indicated two hours. Judge Nighswander then stated

"...the earliest time would be the 29th of October, and I am going to take time on a Wednesday...I must say that I regret very much that there is no court time before then, but it's entirely out of my hands."

Kim was committed to the care and custody of the Society in the interim.

On October 29, 1975, Mrs. Harvey appeared for the Society and Mr. Higgins for the parents. Mr. Carter of the Society was present. Mr. Higgins sought an adjournment because of his involvement in an unfinished trial, but he also raised the point that "criminal charges" had been laid against the parents under section 40 of The Child Welfare Act and they were required to appear in another court the following day, October 30, 1975. He suggested that thus there was a multiplicity of proceedings.

He suggested that the charge under section 40 of The Child Welfare Act should be dealt with before the Society's application proceeded. In his

evidence upon the Inquiry Mr. Higgins said that it was his view that was the correct sequence. He gave no basis for it. In the event, his view or wish ultimately prevailed.

Although Judge Nighswander had stated that if the hearing were adjourned "it will be certainly in December or early January before we can proceed" and although all agreed that medical witnesses had been subpoenaed and would be inconvenienced, Mrs. Harvey said she had no real objection to the adjournment sought by Mr. Higgins.

The hearing was then adjourned to January 19, 1976 with Kim remaining in the care of the Society in the meantime. Judge Nighswander indicated that he would reserve the whole of January 19, 1976 for the hearing and that the matter was "peremptory."

On October 30, 1975, in the Provincial Court (Criminal Division) of the County of Lambton the charge under section 40 of The Child Welfare Act was adjourned to November 13, 1975.

On November 13, 1975, the matter was adjourned and transferred to the Court to be spoken to on November 17, 1975. The transfer was made because section 20 of The Child Welfare Act gave jurisdiction in such matters only to a Judge presiding in a provincial court (family division).

On November 17, 1975 after pleas of not guilty were entered by the parents, that matter too was adjourned to January 19, 1976 for trial.

On January 19, 1976, Mrs. Harvey, appearing for the Society upon its application, sought leave to present all of the evidence which the Society proposed to call with the exception of that of Dr. Singh who was "not available." She asked that the hearing then be adjourned to receive Dr. Singh's evidence at a later date. Mr. Higgins objected. He said he had, only minutes before, learned of Dr. Singh's absence. He had learned that from Police Constable Wyville. His objection was based on his experience with difficulties arising in other cases the trials of which in the Court had been "split" by intervals of six to eight weeks. That was much the same period of time

that Judge Nighswander mentioned when he discussed a possible adjournment on an earlier occasion.

Judge Nighswander pointed out that he was unable to set aside a whole day in early February and stated that he would pick the earliest date "that we have a whole day available."

In the end both matters were adjourned to February 25, 1976, peremptory, at least with reference to the Society's application, with Kim remaining in the care and custody of the Society until then.

On January 19, 1976 there was discussion in Court as to Kim's visits with her parents. Mr. Higgins seemed to state that Mr. Carter, who was present in Court, had informed Mr. Higgins' office that Kim became "fractious" after seeing her parents. Mrs. Harvey did state that Kim became upset with the visits.

Thus by January 19, 1976 the Society's personnel, especially Mrs. Harvey and Mr. Carter, in addition to Mrs. Kirby and the foster parents, were aware of Kim's reaction to visits with her parents at the Society's offices.

At this stage, at least insofar as the proceedings against the parents under section 40 of The Child Welfare Act were concerned, the phenomenon of lengthy delay in Court proceedings was reversed and the date for trial was brought forward.

On February 10, 1976 the Crown Attorney received, hand-delivered, a letter from Mr. Higgins stating:

"...when this matter comes back before the Court under section 40(1) of The Child Welfare Act and on the Children's Aid Society application, that Mr. Popen will acknowledge responsibility for injuries to the child."

The letter went on to request that the matter be dealt with on the following day, February 11, 1976, or at 1:30 p.m. on February 23, 1976 because Mr. Higgins had another matter scheduled for February 25, 1976, the date to which the matters had been

adjourned and he felt "this matter [could] be dealt with briefly as proposed."

Mr. Andrew M. Lang, then Crown Attorney for the County of Lambton, testified that on receipt of that letter he telephoned Mr. Higgins to advise him that no one from the Crown Attorney's office could attend in the Court on February 11, 1976.

Mr. Lang testified that during that conversation or later he spoke with Mr. Higgins about Annals Popen "acknowledging" responsibility for injuries to Kim. He said it became clear to him that Mr. Higgins was proposing that Annals Popen would plead guilty as charged and that the charge against Jennifer Popen would be withdrawn. Mr. Lang's understanding of the proposal seems to me to be the only reasonable conclusion to be drawn from Mr. Higgins' letter.

Mr. Lang's "clear distinct recollection" was that he then telephoned Staff Sergeant Allan, of the Sarnia Police Force, to advise him of that discussion with Mr. Higgins and to indicate to Staff Sergeant Allan that the position of the Society should be ascertained before any response was made to Mr. Higgins' proposal. He said that, about one and one-half hours, later Staff Sergeant Allan indicated to him that the Society was agreeable to the disposition of the charge under section 40 of The Child Welfare Act as discussed with and suggested by Mr. Higgins. I gather as well that Staff Sergeant Allan indicated that he, for the Sarnia Police Force, had no objection to that disposition.

Staff Sergeant Allan, while he recalled some conversation with Mr. Lang about Mr. Higgins' letter, was unable to recall any such conversation with anyone at the Society. He agreed that had he been instructed by Mr. Lang to do something he would have done it himself or would have ensured that it was done by another officer.

Similarly Police Constable Wyville recalled that he was informed of Mr. Higgins' proposal before the appearance in Court on February 23, 1976. He too had no recollection of having contacted the Society, but he felt it was possible he had spoken to Mr. Carter.

Mr. Carter and other employees of the Society denied that anyone at the Society was aware of the proposal until after it became a *fait accompli* on February 23, 1976. In his opinion, as expressed upon the Inquiry, that disposition of the charge under section 40 of The Child Welfare Act had a damaging effect upon the conduct of the Society's application for wardship.

However, Mrs. Harvey was present in Court when the charge under section 40 of The Child Welfare Act was dealt with on February 23, 1976. No explanation for her presence was given. The transcript of the Court proceedings does not indicate that she objected to the plea and withdrawal.

Mr. Higgins in his testimony said it was very likely that the Society were aware of the proposal he was making to Mr. Lang. He said he received his instructions on February 6, 1976 and, in keeping with his instructions, was then in touch with the Society to inform Mr. Carter that he was free to see Mr. and Mrs. Popen at will. Mr. Higgins even went so far as to say he thought his initial contact with anyone other than Mr. and Mrs. Popen with reference to the proposed disposition of the charge under section 40 of The Child Welfare Act was with Mr. Carter and that it was only later that he spoke with the Crown Attorney.

However informally it may have been done and though neither the Society's personnel nor the Sarnia Police Force officers who testified have any firm recollection or note of it having been done, I am satisfied that the Society was advised of Mr. Higgins' proposal and that the Crown Attorney and the Sarnia Police Force were prepared to accept it and act on it. I am satisfied that the Society indicated its concurrence.

I am fortified in that conclusion by my recollection of Mrs. Kirby's evidence that the proposed disposition of the charge under section 40 of The Child Welfare Act and Mr. Carter's concern arising therefrom were among the subjects discussed on February 19, 1976 in Mrs. Harvey's office when Police Constables Wyville and Charlton, Mrs. Kirby and Mr. Carter spoke with Mrs. Harvey. As well, how else or why else was Mrs. Harvey in the Court on February 23,

1976 for what seems to have been virtually a specially arranged appointment for the hearing of the charge under section 40 of The Child Welfare Act. I do not recall any evidence that her attendance in Court was merely a co-incidence.

Mr. Lang testified that from the wording of Mr. Higgins' letter he had assumed that the Society's application for wardship would also be brought forward to February 23, 1976, but he was not responsible for the conduct of that application. He felt it would be appropriate for both matters to be dealt with essentially concurrently.

Mr. Lang testified that following those conversations with Staff Sergeant Allan he instructed his only full-time assistant, Mr. Edward Hibberd, as to what had been discussed and that he, as Crown Attorney, was prepared to accept Mr. Higgins' proposal.

Mr. Lang testified that he was satisfied with the outcome, including the sentence imposed upon Annals Popen.

On February 23, 1976, when the charge under section 40 of The Child Welfare Act was dealt with, Mr. Hibberd appeared for the Crown and Mr. Higgins for the parents. As I have already written, Mrs. Harvey of the Society was present as noted on the transcript of that day's proceedings in Court and raised no objection to what occurred. From my assessment of Mrs. Harvey she would not have hesitated to voice her opinion if she had felt that what was happening was contrary to her wishes or to the interests of the Society and Kim.

The plea of Annals Popen was changed to guilty and the charge against Jennifer Popen was withdrawn. Mr. Hibberd had with him the brief prepared by Police Constable Wyville for use by the Crown Attorney. It contained a brief synopsis of Police Constable Wyville's attendance at St. Joseph's Hospital on August 31, 1975, Kim's injuries as noted at that time, Mrs. Dick's attendance at the hospital, some of Kim's prior medical history and injuries and the opinions of Dr. Singh and Dr. Jumeau that Kim was a "battered" child as well as reference to Mrs. Hewitt's observations and Mr. Carter's involvement.

In essence, without making mention of the references in the brief to Mrs. Hewitt and Mr. Carter, Mr. Hibberd read the contents of the brief to the Court on February 23, 1976.

At that point Mr. Higgins was asked by Judge Nighswander whether Annals Popen agreed with the facts as read by Mr. Hibberd. I have read Mr. Higgins' response. It seems to me to contain no clear statement of agreement or disagreement with Mr. Hibberd's outline of the matter. Clearly it was taken by Judge Nighswander, in conjunction with Annals Popen's plea of guilty, as I am sure Mr. Higgins intended it to be, as sufficient to support a finding of guilt against Annals Popen.

In his remarks in Court, Mr. Higgins said he had not "quizzed" Annals Popen on the particulars of the various incidents, but was instructed that Annals Popen had "a drinking problem." He went on to say that Annals Popen

"feels that he is probably responsible in whole or in part for the injuries [Kim] suffered."

Mr. Higgins went on to speak of the crib as being insecure. He then said

"I have instructions from Mr. Popen that he accepts responsibility for this."

The juxtaposition of sentences seems to confine that acceptance of responsibility to the condition of the crib. Mr. Higgins went on to speak of the good standard of housekeeping in the Popen home and the prideful loving care of Kim by her parents. Mr. Higgins went on to say:

"I can only conclude from what Mr. Popen tells me that he does not remember doing these things."

In his evidence on the Inquiry Mr. Higgins said he had no notes to indicate that prior to February 23, 1976 he had any information about any incident of alleged abuse of Kim prior to August 31, 1975. Mr. Higgins impressed me as a man who spoke precisely and carefully. I do not extend that

portion of his testimony so as to form a denial that he had any such information prior to February 23, 1976.

In his submission to the Court Mr. Higgins then expressed hope that, if a Probation Officer were involved, a deeper inquiry would be made by the Probation Officer along with the Society's involvement. The whole trend of his comments appeared to absolve Jennifer Popen of any involvement except perhaps

"poor supervision...of the actions of [Annals Popen] (which I think should be remedied and I am sure that the Children's Aid Society will look after that aspect)... and that whatever happened to Kim was by accident, as by Annals Popen dropping her while he was drunk, rather than by "abusive action."

I do not recall that anywhere in the evidence presented in the Court or upon the Inquiry was there any reference to Annals Popen having dropped Kim. Indeed the whole thrust of the evidence which was presented upon the Inquiry out of the mouths of Jennifer Popen and Annals Popen was that Jennifer Popen alleged and had told, even persuaded, Annals Popen that the injury to Kim was caused when she was struck by a slipper thrown by Annals Popen when he was drunk and did not later remember what he had done.

I assume that Mr. Higgins' reference to Annals Popen having dropped Kim was based on what one or other or both of Jennifer Popen and Annals Popen had told him. I would also assume that in that regard Mr. Higgins was the recipient of another "story" from Jennifer Popen and that Annals Popen too was persuaded to believe and accept it. The transcript of the proceedings in Court does not indicate that he in any way questioned what Mr. Higgins said. In view of my assessment of him that does not surprise me.

Annals Popen's evidence before this Inquiry leads me to believe that his plea of guilty to the charge under section 40, The Child Welfare Act was based on his willingness to be persuaded that he caused the injury to Kim by striking her with a slipper he had thrown. Judge Nighswander did not

have the benefit I have had of hearing how Annals Popen came to have that willingness.

Thus clearly even Mr. Higgins' remarks should have alerted others, including Mrs. Harvey and the Society, that further and more complete investigation was required to ascertain what the situation in the Popen home and family really was.

A pre-sentence report was ordered and the matter was set over to March 29, 1976 for disposition.

Then on February 25, 1976 the application of the Society for wardship of Kim was heard by Judge Nighswander. Mrs. Harvey appeared for the Society and Ian Harvey of Mr. Higgins office appeared for the parents. Mr. Carter of the Society was present.

Mrs. Harvey told the Court that because Kim had been in the care and custody of the Society since August 31, 1975, the Society sought wardship for only two additional months from February 25, 1976.

In her evidence upon this Inquiry, Mrs. Harvey said she had spoken to Judge Nighswander in private prior to the hearing to advise him of her intention to make that submission. Upon the Inquiry she testified that at all times she hoped that, even though she asked for an order of wardship for only two months, Judge Nighswander would make an order for a longer period of wardship. While she may have spoken with Judge Nighswander on occasion, I do not think that she had with him a conversation such as she described. It is inconceivable that Judge Nighswander would have permitted it.

In her evidence upon the Inquiry Mrs. Harvey said she took that position in Court in the hope that it might expedite the hearing and the granting of wardship, but with the mental reservation that she hoped the Judge would direct a longer period of wardship. I doubt that she had any such mental reservation.

She said she felt that if she was granted an order for wardship, however short, she could later seek to extend it.

Nothing in the Society's files makes any reference to that tactic. I am doubtful, on all the evidence I heard, that she employed that deliberate tactic on February 25, 1976. I come to that conclusion particularly in the light of the testimony as to the meeting of February 19, 1976 when Mrs. Harvey is said, by Mrs. Kirby, to have stated she considered returning Kim to her parents before the hearing.

Mr. Harvey, for the parents, agreed with Mrs. Harvey's request for an order for wardship of only two months' duration.

Judge Nighswander made it clear he was not bound by the Society's request nor by the parents' agreement therewith. He specifically reserved to himself the determination of what disposition was to be made after he had heard evidence and submissions.

It should be noted that Mr. Carter, who had been directly responsible for the preparation for the hearing of the Society's application, testified upon this Inquiry that he, personally, had intended that the application would be for wardship of Kim for a period of six months. He said that was his intention even on February 25, 1976. Clearly Mrs. Harvey imposed her will and decision in the presentation of the Society's position to the Court. She did so without prior consultation with Mr. Carter or anyone else at the Society.

The transcript of the proceedings in Court does not show any dissent by Mr. Carter. No one asked for an expression of his opinion. He was not called as a witness though he was present at the hearing.

Mr. Carter testified upon the Inquiry that he was not consulted by Mrs. Harvey with respect to her intention to apply for wardship for a term of only two months. He said he disagreed with the position advanced by Mrs. Harvey, but did not feel free to intervene.

Thus Judge Nighswander was deprived of an expression of opinion which may have been of importance to him in his deliberations.

More importantly, Kim was deprived of any benefit that may have flowed from the expression of such an opinion and any elaboration thereof to show the basis and rationale of the opinion.

Police Constable Wyville testified before Judge Nighswander as to his observation of Kim's injuries on August 31, 1975. He testified that Jennifer Popen, when asked as to the cause of those injuries,

"gave two or three different reasons exactly what happened."

By agreement, the facts presented upon the trial of Annals Popen on the charge under section 40 of The Child Welfare Act on February 23, 1976 were taken to be part of the evidence upon the Society's application.

Photographs of Kim taken at St. Joseph's Hospital on August 31, 1975 by Police Constable Turner were introduced.

Miss Hazel Cappa, the Director of Medical Records of the hospital, informed the Court of Kim's various admissions to and treatment at the hospital.

Kim was a patient admitted to the hospital from March 22 to April 3, 1975 for treatment of a fracture of the left humerus. She was an out-patient on April 12, 1975 for treatment of a respiratory infection. She was a patient admitted to hospital from April 28 to May 2, 1975 for treatment of bronchiolitis and diaper rash. Kim was a patient admitted to hospital from August 31 to September 5, 1975 for treatment of multiple bruises and a fractured humerus and on that occasion the presence of battered child syndrome was noted.

Dr. Singh testified briefly as to his various examinations and treatments of Kim and the, to him, unusual explanations given by the parents for the various severe injuries which Kim suffered.

Mrs. Hewitt testified as did Mrs. Dick and Mrs. Kirby.

Mr. Harvey, acting for the parents, stated he would not call any evidence, but Judge Nighswander, apparently pursuant to section 25(2) of The Child Welfare Act, called Jennifer Popen to testify. In his testimony upon the Inquiry, Judge Nighswander was unable to recall exactly why he had decided to call Jennifer Popen as a witness.

In response to a direct question by Judge Nighswander as to how Kim's arm had been broken on March 22, 1975, Jennifer Popen said that that had been an accident wherein Kim had fallen to the floor from her "little sitter."

As was the case so often when Jennifer Popen was testifying upon the Inquiry, her answer to Judge Nighswander is confusing. The confusion is as to whether the sitter was in or out of the crib. One sequence of the exchange is recorded in the transcript of the Court proceedings as follows:

"Q. Where did she fall from?

A. Had her out of her crib in her little sitter.

Q. She was in her sitter in the crib?

A. Yeah. I had her in a sitter."

As to the injuries which were seen at the hospital on August 31, 1975, Jennifer Popen's explanation to Judge Nighswander was that she had not seen them happen, but found them when she was dressing Kim and Kim cried. Again she gave a series of confusing answers which seemed to indicate the injuries were caused by Annals Popen holding Kim while he was drinking on the day before Kim suffered the fracture discovered on August 31, 1975. As to that fracture, Jennifer Popen said that Kim had fallen from the crib. She had not seen Kim fall, but found her on the floor. She denied seeing any bruises on Kim's knees.

Jennifer Popen told Judge Nighswander that she had taken Kim to Sarnia General Hospital where she was examined for about one-half an hour and found to have nothing much wrong with her. She said she was sent home from Sarnia General Hospital with instructions that Kim be watched and brought back the next day if there were anything further. She said

that, as they left Sarnia General Hospital, Kim was crying so she said

"we will take [Kim] to St. Joseph's and we will check her over good."

When one considers the nature and extent of the injuries suffered by Kim as found on August 31, 1975 and shown on the photographs taken by Police Constable Turner and when one compares Jennifer Popen's responses to Judge Nighswander with what she had told others, including Police Constable Wyville, Dr. Singh and Mrs. Dick, the implausibility of her responses to Judge Nighswander is apparent. But Mrs. Harvey for the Society did not cross-examine Jennifer Popen upon those responses.

In her evidence upon the Inquiry, Mrs. Harvey said she was "pretty sure" it was Jennifer Popen who had abused Kim. To my mind that testimony makes her failure to cross-examine Jennifer Popen all the more surprising.

I would think that it would have been appropriate for the Society and Mrs. Harvey to seek to assist the Court and themselves in the care of Kim by putting before the Court, even if only by cross-examination of Jennifer Popen, anything that might support such a suspicion or which might help to identify whoever abused Kim.

Judge Nighswander was deprived of the advantage of anything that might have flowed from any such cross-examination. Thus Kim was deprived.

Judge Nighswander then delivered what has been described in evidence upon this Inquiry as a strong judgement. He noted Dr. Singh's testimony that his opinion was that the explanation given by Jennifer Popen for the fracture discovered on March 22, 1975, namely that it occurred while she was changing Kim's clothing, was not consistent with the nature of the injury.

He noted that the injury to Kim's upper arms

"was bruising that was around on both sides of the arm, and the explanation that this

could have been caused by a fall is an explanation that seem physically impossible, for a person to be bruised on both sides of two arms. Dr. Singh stated that an explanation that was given to him was that the baby fell from the crib; he stated that babies can't pull themselves up at that age, and are not indeed to the point of walking or crawling out of a crib."

Judge Nighswander went on to state that Kim may have fallen from the rocker in the crib while the side of the crib was down, as Jennfier Popen had told him,

"but it certainly could not physically possibly cause all the injuries to the child."

That could be stated even more strongly if one were to believe that Kim was in her sitter out of the crib.

Judge Nighswander stated in his reasons for judgement:

"I am satisfied that the injuries to this child were caused -- many of them at least -- by mishandling by the people in whose charge the child was. Mr. Popen, the father, has admitted that some of this could have been caused by himself, and he pled (sic) guilty to a charge that accused him of this."

Judge Nighswander then found Kim to be a child in need of protection. He continued his judgement to find that Kim had suffered some injuries as a result of "brutal handling" by Annals Popen. He continued:

"For a child two months of age to have a broken arm from being dressed, I accept the evidence of Dr. Singh that this is completely inconsistent with an injury that could be sustained while a child is being dressed."

Judge Nighswander rejected the Society's suggestion that he make an order for Kim's wardship for only two months. He said:

"I am not satisfied that this is a sufficient length of time to be sure that proper steps have been taken to make this home safe for the child."

Judge Nighswander seemed to be concerned as to Annals Popen's problems with alcohol. He concluded his reasons for judgement as follows:

"I am aware that the child has been in care for a length of time, but at the same time we have no evidence before us of what Mr. Popen has done, if anything, about his alcohol problem, and I am definitely going to note that he must give evidence that he has done something and that it is succeeding, before the Court will permit the child to return to its parents. This does not necessarily mean that the child will not be with its parents for a further six months, but simply means the Children's Aid Society have control for that period of time. I therefore, am committing the child to the care and custody of the Children's Aid Society, City of Sarnia, County of Lambton, for a period of six months dating from today."

It seems to be quite clear that Judge Nighswander was pointing out to those who should have been listening, the Society's employees, Mrs. Harvey and Mr. Carter, that he had great concern for Kim's safety in her parents' home. On the basis of what he had been told he seemed to feel that the greater threat to Kim came from Annals Popen, but nonetheless his remarks expressed some concern as to Jennifer Popen's role in Kim's care.

In the light of Mrs. Harvey's professed belief as to Jennifer Popen's involvement in Kim's injuries those remarks by Judge Nighswander should not have fallen on deaf ears.

The Society did not obtain a transcript of Judge Nighswander's reasons for judgement and

Mrs. Harvey apparently made no notes as to his comments. That indicates to me that she intended to manage Kim's case as she saw fit without regard to the views or opinions of even Judge Nighswander.

As I read the concluding paragraph of Judge Nighswander's reasons for judgement set forth above, I interpret it to mean that he expected Annals Popen would be called upon to present evidence to the Court as to his successful treatment of his alcohol problem before the Court would permit Kim to be returned to her parents. Mr. Higgins, in his evidence, said that was his understanding of the judgement.

I am aware of Judge Nighswander's evidence upon the Inquiry to the effect that he was content to permit the Society to exercise its discretion as to Kim's return to her parents' home. Nonetheless I observe his comments to Mrs. Lo in Court on August 4, 1976 when she presented the Society's application for a supervision order. He asked,

"...so is it the agency's intention to ask for a supervision order for the child -- in other words, the child to be returned to the parents subject to the supervision of the Children's Aid?"

Mrs. Lo replied

"Yes."

I interpret Judge Nighswander to have spoken as if Kim's return to her parents were to be effected later. It would seem he was unaware and did not contemplate that the return might already have occurred. The adjournment to September 13, 1976 as requested by Mrs. Lo was granted with the same proviso that had been imposed on all prior adjournments, namely

"the child committed to the care and custody of the Children's Aid Society of the City of Sarnia, County of Lambton, until that date."

One is left to wonder what Judge Nighswander's reasons for judgement might have contained had he been made aware of some of the

underlying suspicions of some of the Society's employees expressed upon this Inquiry that Jennifer Popen was the one who had caused Kim's injuries. Now, in the light of her plea of guilty at her trial in December, 1977 and her evidence upon this Inquiry, those suspicions appear to have been valid and well founded.

I do not think it is unduly harsh to say that Judge Nighswander was misled. All that might have been put before him was not. His attention was particularly drawn to Annals Popen and away from Jennifer Popen.

That may certainly have suited Mr. Higgins' purposes and those of his clients, Annals Popen and Jennifer Popen, at that time. I see nothing wrong in that from Mr. Higgins' point of view as a barrister involved in an adversary situation and relying upon information given to him by his client or clients. Unfortunately that information appears to have been false and those who were in a position to challenge it, the Society upon the wardship application and the Crown Attorney and the Sarnia Police Force upon the charge under section 40 of The Child Welfare Act, did not do so.

That they did not is perhaps understandable. In effect both matters were resolved in favour of the Crown and the Society by the plea of guilty to the charge under section 40 of The Child Welfare Act and the absence of opposition to the Society's application for wardship.

It would appear that as these matters proceeded it was assumed that they were two quite separate and distinct, but somehow related matters. The Society appeared to assume that responsibility for the prosecution of the information alleging an offence under section 40 of The Child Welfare Act lay solely with the Sarnia Police Force and the Crown Attorney for the County of Lambton and that responsibility for carriage of the application under The Child Welfare Act for custody of Kim lay solely with the Society.

The Society, particularly Mr. Carter, seemed to feel that once the Sarnia Police Force and the Crown Attorney for the County of Lambton had

agreed to accept Annals Popen's plea of guilty to the charge under section 40 of The Child Welfare Act and to withdraw that charge against Jennifer Popen, the application of the Society under The Child Welfare Act was irretrievably prejudiced.

Mrs. Harvey in her evidence said that she felt she could not, upon the Society's application, pursue Jennifer Popen's involvement in Kim's abuse because the charge against her under section 40 of The Child Welfare Act had been withdrawn and the Society had no other evidence of Jennifer Popen's involvement in abuse of Kim.

With all due respect to the Society, Mr. Carter and Mrs. Harvey, my opinion is that each of those views is in error. My opinion is that the disposition of the charge under section 40 of The Child Welfare Act, by plea or otherwise, should not have caused the Society's personnel to feel that they were in any way inhibited from presenting upon the application for wardship of Kim evidence of whatever nature the Court would be prepared to accept. That might include evidence to the effect that, as well as Annals Popen, who had entered a plea of guilty to the charge under section 40 of The Child Welfare Act charge, Jennifer Popen had failed in her responsibilities to Kim or had actively abused her.

As one reviews the proceedings in the Court, it is interesting to note that during the time of those proceedings His Honour Judge Nighswander was responsible for the conduct of all matters to be heard in the Court and in the Provincial Court (Family Division) of the County of Kent. In September, 1976 another provincial court judge was appointed and was assigned responsibility for matters to be heard in the Court.

It is apparent to me that the responsibility assigned to Judge Nighswander by the Government of the Province of Ontario, namely all matters to be heard in the Court and in the Provincial Court (Family Division) of the County of Kent, was just too much for one judge to be able to administer and conduct without some of the long delays that occurred in the proceedings with reference to Kim and her parents. Even a judge as experienced, concerned and capable as Judge Nighswander could not avoid such

delays. Those delays were not in Kim's best interests.

As Judge Nighswander said in his testimony:

"I should point out that practice at that time, because there was very little court time available to do justice in all the matters that came before it, so we very carefully did not set a date for trial on anything until it was absolutely certain there was going to be a trial, because it might be three months afterwards and there wouldn't have been witnesses present in all probability to have gone on that day in any event."

Some of Mr. Higgins remarks, especially those relative to the suggestion by Mrs. Harvey that the case might be split awaiting Dr. Singh's evidence, support the view that there were lengthy delays because of the inability of the Court to set earlier dates for hearings or continuations of hearings. Those remarks were not challenged by anyone. In his evidence upon the Inquiry, Mr. Higgins stated that sometimes there were delays of up to two and one-half months between Court appearances.

It would seem to me that in such circumstances, where lengthy delay was almost certain to result if one did not proceed on the date fixed for the hearing of any matter in the Court, it was incumbent upon the applicant, the Society, or the Crown Attorney and Sarnia Police Force to be prepared and ready to proceed on any day fixed for trial or hearing and to resist any application for adjournment.

Perhaps if, before September 1976, there had been a judge of the provincial court (family division) responsible only for matters to be heard in the Court, some of the delays in proceedings and thus perhaps some of the delays and problems mentioned by the Society's personnel in the handling or conduct of Kim's case by the Society might have been avoided.

As one now, in calm retrospect, looks at The Child Welfare Act, the Crown Attorney and the Sarnia Police Force were in error in having the prosecution of the charge under section 40 of

The Child Welfare Act returnable in the Provincial Court (Criminal Division) of the County of Lambton. Those proceedings were properly returnable in the Court. However, that error did not, in my opinion, make any special or unusual contribution to the tragedy that ultimately developed. I am not persuaded that if both matters had proceeded in the Court from their respective dates of institution they would have proceeded any more speedily than they did.

I should say that the rationale of the Crown Attorney's advice to the Sarnia Police Force as stated in his testimony upon the Inquiry appears to me to be sound. He recommended that a charge be laid under section 40 of The Child Welfare Act because he felt that, from the Crown's point of view, it would be easier to prove the elements of that offence than to prove the elements of a charge of assault causing bodily harm under the Criminal Code. His opinion was that it would be easier to prove that the parents failed to protect Kim rather than that one or both of them assaulted Kim.

It should be noted that the Crown Attorney's office appeared to be understaffed. As I recall Mr. Hibberd's evidence he was able to appear on February 23, 1976 only by missing his lunch and being virtually on the run from and to other court appearances required elsewhere both in the morning and afternoon. His recollection was that he had no knowledge of the entire matter before his actual appearance in Court on February 23, 1976 when he received the Crown brief. He said part of the difficulty was that the Crown Attorney and his staff did not regularly appear in the Court at that time.

While the records of the Society do not disclose this, it was apparent to me, on the oral testimony and the Court records presented upon the Inquiry, that the Society, as represented by Mrs. Harvey, originally intended to apply for an order granting wardship of Kim for a period of six months. However, as I have already written, when the application ultimately came on for hearing on February 25, 1976 Mrs. Harvey, appearing for the Society, sought an order of only two months' duration. In Court Mrs. Harvey said that term was sought because Kim had, by then, been effectively in the care of the Society for

six months. That submission on behalf of the Society was not opposed by counsel for the parents.

In making that submission Mrs. Harvey entirely ignored the fact that for those six months the Family Services Department of the Society, for whatever reason, had not done any of the work which even Mrs. Harvey said had to be done with the family over a long term. Even by the standards used by the Society that term would be longer than the three months that would have been the duration of involvement by the Short Service Team of the Society.

Judge Nighswander stated in Court that he was not bound by that submission or the agreement by or on behalf of Kim's parents. As he stated in his evidence upon the Inquiry, he was concerned, firstly, to ascertain whether or not Kim was in need of protection and, secondly, to ascertain whether or not the absence of opposition by the parents was solely because the application was for an order of only two months' duration. The learned Provincial Court Judge felt that it should be made clear to the parents that, regardless of the submission on behalf of the Society, he and he alone had the responsibility of determining the issues. The issues were whether an order of wardship should be made and, if such an order was to be made, for what period of time should it be effective.

It was clear to me from Judge Nighswander's testimony upon the Inquiry that he felt that the position taken by Annals Popen and Jennifer Popen upon the Society's application to him was tantamount to an admission by them that Kim was a child in need of protection under the terms of The Child Welfare Act and should be in the care and custody of the Society for a period of time. For all practical purposes the position of Kim's parents upon the application by the Society was much akin to Annals Popen's plea of guilty to the charge under section 40 of The Child Welfare Act.

While Judge Nighswander felt that the Society's position had not been forcefully put before him, he felt that was because the application appeared really to be not opposed by the parents. He felt that the procedure adopted by the Society was not at all unusual in the circumstances.

Judge Nighswander did state in his testimony that the only issue before him upon the Society's application was whether Kim was in need of protection and that the guilt or innocence of the parents or either or them was not in issue. I gathered he shares my view that the disposition of the charge under section 40 of The Child Welfare Act did not predetermine the result upon the Society's application for wardship of Kim.

Nevertheless it is my view that all available evidence should have been presented to him. That it was not is all the more surprising when one recalls the evidence of Mrs. Harvey upon this Inquiry that she wanted all the evidence before the Court and that, in seeking wardship for only two months, she felt no concern since she felt she could more easily extend the initial period of wardship than obtain the initial order for wardship.

My view is that any extension of a period of wardship would more easily flow from a strong evidentiary base laid during the initial hearing than it would flow from a weak evidentiary base at that time. Thus, in my view, the Society should have put its case as strongly as possible in the first instance. That was the responsibility of the Society.

It is of interest to note that during this period of time, September 5, 1975 to February 25, 1976, while Kim was in the care and custody of the Society, the Children's Services Department of the Society was attending, to her day-to-day needs, apparently quite successfully with the assistance of the foster home, Mr. and Mrs. Cecile. At the same time the functions of the Family Services Department of the Society in relation to Kim and her parents were, for all practical purposes, non-existent apart from preparation of the application for wardship and its presentation in Court.

Even in that preparation and presentation there was confusion and failure. Mr. Carter was responsible for the management of the case and delivery of the Society's services to the Popen family and for preparation of the application to Court. Mrs. Harvey was his supervisor. She was responsible for presentation of the application in Court. Mr. Carter was not aware that Mrs. Harvey

intended to ask for a period of wardship of two months' duration rather than the six months' duration which he felt appropriate and which, until February 23, 1976, had been the only period discussed by the Society in Court.

Mr. Carter, to whom the case had been actually assigned by this time, testified as to the difficulties which he encountered in trying to perform some of his duties.

Mr. Carter said that Police Constables Wyville and Charlton called upon him on September 2, 1975 because of difficulties they were having in interviewing the parents. He said they sought his assistance in arranging separate interviews with the parents. He said he arranged for the parents and police officers to be in the Society's offices at the same time on September 3, 1975 when he managed to separate the parents and thus enabled separate interviews of them by the police.

Mr. Carter's position seemed to be that, because he was informed by Police Constable Wyville that "criminal" charges would be laid against the parents, "casework practices could not be established." He seemed to base this on the fact that the Court had not yet been called upon to determine who had abused Kim and he himself had some personal reservations on the matter. That seemed to me to be a statement by him that notwithstanding anything said by anyone he was uncertain as to whether Annals Popen or Jennifer Popen or both of them or neither of them had abused Kim. But why he should think that "casework practices could not be established" escapes me. That was a gross error by Mr. Carter. He did not properly appreciate either his role and responsibility or that of the Society.

Determination of the source or cause of Kim's injuries, while important, would be only one element in "casework practices." There were many other matters to be examined and resolved. The testimony of Mr. Lang and Judge Nighswander upon this Inquiry supports my view. The real issue upon the Society's application for wardship was whether or not Kim was a child in need of protection. The identity of the person or persons actually perpetrating the abuse was not essential to either the charge under

section 40 of The Child Welfare Act or the Society's application for wardship. There was so much more that Mr. Carter and the Society should have tried to learn about Kim and her family. That was not done. Kim's interests were not well served.

Mrs. Harvey, in her evidence upon the Inquiry, seemed to share Mr. Carter's view that the position taken by Mr. Higgins prevented the Society from being

"able to get in there [to the Popen house] and do the work that we were supposed to be doing ... [investigation of the Popen house] and working with the parents and finding out more about them, which is what one does."

The Society's personnel, as represented by Mrs. Harvey and Mr. Carter, misunderstood or misconstrued or were ignorant of the provisions of The Child Welfare Act.

Mr. Carter testified that on January 16, 1976, when Mr. Higgins telephoned to request a change in the date of the hearing returnable on January 19, 1976 he had told Mr. Higgins he would have to speak to "my [Mr. Carter's] clients" and Mr. Higgins replied:

"Over my [Mr. Higgins'] dead body you do."

Mr. Carter testified that the adjournment from January 19 to February 25, 1976 was "mutually agree[d]" and Mr. Higgins consented to Mr. Carter speaking to Annals Popen and Jennifer Popen prior to that adjournment.

The transcript of the proceedings in Court on January 19, 1976 does not bear out the accuracy of that testimony. The transcript, while six pages long, does not record all of the discussion regarding the date of the next hearing.

It opens with Mr. Higgins' statement of readiness to proceed that day provided there is no delay or interruption. Then Mrs. Harvey asked for an adjournment because Dr. Singh was not present. Mr. Higgins had some comment on that. The only point

agreed upon was that the Court, the Society and Mr. Higgins were available on February 25, 1976 and Judge Nighswander granted the adjournment to that date.

Later the same day in Court, in speaking to the request on behalf of the Crown Attorney for a similar adjournment of the trial of Jennifer Popen and Annals Popen upon the charge under section 40 of The Child Welfare Act, Mr. Higgins opposed the request and asked that the charge be dismissed.

I am satisfied that adjournment from January 19 to February 25, 1976 was not by mutual agreement.

Mr. Carter testified that again prior to the February 25, 1976 hearing he felt he had to speak to Mr. Higgins to obtain permission to speak to Annals Popen and Jennifer Popen so that, if required, he could give the Court

"an accurate picture or statement of the conditions of the home and themselves [Annals Popen and Jennifer Popen] at that point."

He said Mr. Higgins granted such permission, but with the addendum:

"Don't quiz them [Annals Popen and Jennifer Popen]."

I can only query how Mr. Carter felt he might obtain "an accurate picture or statement of the condition of the home and [the parents]" without "quizzing" the parents. Surely a merely physical visitation to and observation of the dwelling house and standards of housekeeping without some inquiry or interrogation of the parents would be meaningless in relation to abuse of the sort that caused injuries as severe as those suffered by Kim.

Mr. Carter testified that he felt he was thereby "legally restricted" and prevented from carrying out his normal case work practices. He neither sought nor received any advice from a solicitor.

It is clear to me that he acted in accordance with his own opinion. Apart from preparation of the material for the hearing of the Society's application for wardship he did virtually nothing which might ordinarily have been expected of a worker in the Family Services Department of the Society. As I have noted elsewhere even that preparation by Mr. Carter was incomplete. He did observe visits of Kim with her parents at the Society's office and he did physically inspect the family home on two occasions, January 16 and February 20, 1976, just before scheduled Court hearings. He did speak with the parents on September 3 and 24, 1975 to try to ascertain how Kim's injuries were caused, but he made no such effort after September 24, 1975 because Jennifer Popen told him Mr. Higgins had advised her not to talk to Mr. Carter and he, Mr. Carter, accepted that. He seemed almost to be in awe of Mr. Higgins and wished to avoid any "disturbance" with him.

Mr. Carter upon this Inquiry said he felt that Mr. Higgins had the right to restrict his interrogation of Mr. and Mrs. Popen. Mr. Carter testified that his role was not to investigate the parents but to "establish a rapport" with them. While pursuit of an investigative role might be difficult for a social worker and hamper the establishment of rapport it was, in my view, incumbent upon Mr. Carter to investigate or at least to ensure that someone did investigate. Without investigation the Society would be unable to ensure that the judge hearing its application would have all of the information necessary to enable the judge to make appropriate findings and dispositions.

In Kim's case Judge Nighswander did not have all of that information.

Mr. Carter's evidence was that, to his knowledge, the assistance or advice of solicitors was not available to the Society's personnel in 1975. In his words the Society's workers were in "a very precarious situation" in relation to proceedings in Court. Clearly he was not aware that the Board of Directors of the Society had on January 6, 1976 made funds available to engage a solicitor in any case in which the Local Director, Mr. Lovatt, felt it was necessary.

A copy of the minutes of the meeting of the Board of Directors of the Society held on January 6, 1976 was filed as an exhibit upon the Inquiry. The relevant portion is as follows:

"Mrs. Harvey advised that, due to restraints, the agency was not allowed to hire a lawyer and since they had been involved in some cases of child abuse they felt the need of legal assistance. Mrs. Harvey has had some conversations with Mr. Ray Wyrzykowski, Director of Legal Aid, re. applying for Legal Aid for Society Wards and Non-Wards involved in such cases. Mr. Wyrzykowski is looking into this possibilities at present. Mr. Shafley moved that \$2,500.00 be set aside in case of serious need for the Director in his judgement, to seek legal assistance. Mrs. Berkoff seconded. Carried."

That was the last item of business at the meeting. That is perhaps indicative of the attitude of Mr. Lovatt, Mrs. Harvey and Mr. Carter. The desirability of or need for legal counsel in abuse cases was raised with the Board of Directors four months after Kim came into the *de facto* care of the Society. The Board of Directors promptly made funds available. From the testimony upon the Inquiry Kim's was the only active case of abuse within the Society at that time. It must have been the one that caused Mrs. Harvey to raise the matter. But even with funds available for that purpose the Society's personnel did not seek or obtain the legal advice which they needed and knew they needed.

Mr. Carter felt it was important to any worker of the Society involved in the case to have full access to the home and discussion with the parents in a case such as this. To all intents and purposes he neither sought nor received any assistance to obtain such access although he did advise Mrs. Harvey of Mr. Higgins' demands.

Mrs. Harvey, as Supervisor of the Family Services Department, was Mr. Carter's immediate superior. She was aware of the difficulties Mr. Carter felt he was having as a result of the restrictions imposed by Mr. Higgins and accepted by Mr. Carter.

She did nothing about the matter even though she testified that "the Children's Aid Society really needed to work with this family" and she wished Mr. Carter had had more contact with the family. She testified she was not aware she could do anything about it, but she sought no assistance or legal advice.

Mrs. Harvey testified that had the Society worked with the Popen family, even from August 1975 until February 25, 1976, they might have been able to help the parents enough to prevent the ultimate tragedy, or, conversely, the Society might have been able to learn so much about the family that Kim would not have been returned home.

Mr. Carter testified that he felt he was in control in his dealings directly with Annals Popen and Jennifer Popen including his meeting with them on February 20, 1976 in preparation for the February 25, 1976 hearing. He said that was so even though Jennifer Popen moved from attitudes of indifference to attitudes of hostility.

He said that he and Jennifer Popen frequently clashed. He said she was the dominant one of Annals Popen and herself. He said she was vocally critical of the Society, the Sarnia Police Force, hospitals and doctors, particularly Dr. Jumeau. Her criticism was that all of these were spying upon her and were suspicious of her and did not trust her.

None of those feelings or observations were mentioned in Court during any of the proceedings.

Mr. Carter testified that Jennifer Popen "lied profusely" and he found after his second visit with her that he

"could not rely on one statement she made."

I presume that was the visit of September 24, 1975. He referred to conflicting stories she had given to him with reference to a child she had borne in Jamaica. In one version the child had died. In another version the child was alive and with Jennifer Popen's grandmother.

That was not mentioned in Court during any of the proceedings.

Mrs. Harvey in her testimony expressed the opinion that no one believed Jennifer Popen and she believed that at a later date she stated that opinion to Mrs. Lo.

That was not mentioned in Court during any of the proceedings.

Mrs. Lo, in her testimony upon the Inquiry, said that it was not until after Kim's death that she changed her opinion as to Jennifer Popen's credibility. Until then Mrs. Lo was prepared to accept Jennifer Popen's explanation as to how Kim had been bruised. That explanation was noted in Mrs. Lo's recordings in the files of the Society. Mrs. Lo testified that, while she had some suspicion as to the cause of Kim's injuries on earlier occasions, she had no suspicion that Jennifer Popen was abusing Kim during the period from May 27 to mid-July 1976. She believed that Kim was receiving adequate and satisfactory care during that period of time.

I believe that it was only after Kim's death that Mrs. Lo became suspicious that Jennifer Popen had injured Kim in August 1976 and earlier.

Nowhere in her testimony upon the Inquiry did Mrs. Harvey indicate that she advised or instructed Mrs. Lo that, because Jennifer Popen was not to be believed, inquiries should be made beyond the Popen family. I find it astonishing that the Society, particularly Mrs. Harvey, Mrs. Lo and Mr. Carter, not believing Jennifer Popen, did not expand the area of their inquiries and observations. They did a disservice to Kim by presenting the application to Judge Nighswander on the basis on which they did present it and particularly in permitting Jennifer Popen's testimony to be presented without challenge or cross-examination or rebuttal. They failed Kim utterly in that regard.

Mr. Carter testified that from all of what Jennifer Popen told him of her life in Jamaica, some of which he felt was really meaningful to her, he formed the opinion that events in that life were serious enough to have affected her. I do not know

in what sense he uses the word "meaningful" nor do I know how Jennifer Popen was affected.

That was not mentioned in Court during any of the proceedings.

No real effort was made by the Society to determine the extent of any such problem or to learn the true nature of any such events and their affect upon Jennifer Popen.

Mr. Carter testified that on occasion Jennifer Popen told him that she had visions of her own mother who spoke to her and told her what to do. On one occasion she came to Mr. Carter's office because

"her mother had told her to come."

That was not mentioned in Court during any of the proceedings.

Thus clearly in September, 1975, the Children's Aid Society was aware that Jennifer Popen "lied profusely", that the Society should not rely upon her statements, that events in her past had somehow affected her and that she spoke of having visions. But still nothing was done to investigate those past events and to seek to learn the truth of the various "stories" told by Jennifer Popen.

Mr. Carter meticulously complied with the strictures imposed by Mr. Higgins and did not interrogate Kim's parents. Apart from arranging for the attendance of doctors and hospital personnel and police officers to testify as to the March, June and September, 1975 incidents, he did nothing to investigate the background of the parents and their ability, psychologically, emotionally and physically, to care for Kim. He had knowledge of Jennifer Popen's "visions" of her mother. He did nothing to inquire into the effects that they might have upon her ability to care for Kim.

I gather from Mr. Carter's evidence that he spoke to Mrs. Harvey about the position taken by Mr. Higgins and that they, Mrs. Harvey and Mr. Carter, decided that Mr. Carter must still visit the family home. But there was no suggestion he would interview

the parents as he might otherwise have done. What purpose might be served by such visits without discussion with Kim's parents escapes me. I think such visits would be meaningless and useless.

No one from the Society, so far as Mr. Carter was aware, spoke with the Crown Attorney or anyone in that office about what was involved in either the charge against the parents under section 40 of The Child Welfare Act or the Society's application for wardship.

Mr. Carter did not seek any psychiatric or psychological assessment of Jennifer Popen even though upon this Inquiry he testified that he considered such assessment might have been appropriate.

Mr. Carter testified upon this Inquiry that he felt that with the Sarnia Police Force and Jennifer Popen's doctor, presumably Dr. Jumeau, involved he felt that they, the police and doctor, would have attended to that. Nowhere was there any indication that he advised either the police or any doctor that this was his expectation of them. They were merely witnesses upon the Society's application. Surely in preparation for the hearing he would have interviewed them as to what evidence they might be able to give and, if he was expecting evidence with reference to any such assessment, he would have inquired specifically as to whether it was available.

Mr. Carter knew who would be present as witnesses. He knew that none of them could testify as to any such assessment. None of them was a psychiatrist or psychologist.

Indeed, Mr. Carter in his evidence upon this Inquiry, said he did not recommend to anyone specifically the need for any such assessment of Jennifer Popen. I doubt he gave much, if any, thought to such need.

At another point in his testimony, Mr. Carter said he felt it was the responsibility of the Sarnia Police Force to interview the "alleged suspects", presumably Annals Popen and Jennifer Popen, and get confessions from them, but there is no indication he communicated that expectation to the police or even discussed with the police the matter

of interrogation of Annals Popen and Jennifer Popen. Expectation of "confessions" strikes me as a bit of naivete.

From his own testimony as to events on September 2, 1975 Mr. Carter was aware that police officers were encountering difficulty in their efforts to interview Jennifer Popen and Annals Popen. That, coupled with Mr. Higgins' position as to interviews with his clients, should have indicated to Mr. Carter that "confessions" were not forthcoming.

In another part of his testimony Mr. Carter said that his concern over the disposition of the charge against Kim's parents under section 40 of The Child Welfare Act came about because he felt that upon the Society's application for wardship, he would have difficulty in proving that Kim was abused or who had abused her.

This is further evidence of Mr. Carter's failure to understand the nature of proceedings under section 40 of The Child Welfare Act and the elements of the offence alleged in the information laid against Annals Popen and Jennifer Popen.

He said he relied upon the Sarnia Police Force to do the investigation to obtain information "restricted from [his] role." There is no indication he communicated that reliance to the Sarnia Police Force. Mr. Carter did not say why he felt the Sarnia Police Force had any greater power to investigate and interview the parents than he had.

More importantly, no mention was made of any of this in the proceedings before Judge Nighswander. On the testimony presented in Court, Judge Nighswander directed the greater part of his concern towards danger to Kim emanating from Annals Popen. In his reasons for judgement, he seemed almost to express sympathy for Jennifer Popen as a loving wife and mother who, while testifying before him, sought to minimize what was presented to the Court as abuse of Kim by Annals Popen, her husband.

One can only wonder what Judge Nighswander might have said in his reasons for judgement had the Society, through Mrs. Harvey and Mr. Carter, expressed to him all of the concerns they had and

their suspicions as to Jennifer Popen's involvement in the abuse of Kim.

It is of interest to note that Mr. Carter felt that Mrs. Harvey, less than a week before February 25, 1976, was not familiar with the evidence available for presentation upon the Society's application

"unless she had directly interviewed each of the witnesses."

There was no evidence of any such interview by Mrs. Harvey with any witness.

That indicates to me that Mr. Carter had not reported to Mrs. Harvey upon the development and preparation of the case. It also tends to rebut any suggestion by Mrs. Harvey that her decision before February 25, 1976 that Kim would be returned to her home was based on any report from Mr. Carter. I do not believe that Mrs. Harvey's decision was based on anything reported to her by Mr. Carter.

In his evidence upon this Inquiry, Mr. Carter shared my view that the typewritten transcripts forming the Society's files were less than dependable. He mentioned some specific errors or omissions in those transcripts as they related to matters he had recorded. He said that they omitted reference to his concern as to the danger inherent in the construction of the porch at the Popen home which he observed and also omitted the transfer summary as he would have set it forth. He said other items were not transcribed as he had written them.

He said that often the preparation of the typewritten records was "weeks behind." He said that he had objections to the procedure whereby the typewritten material was returned to Mrs. Harvey rather than returned, I presume with the handwritten notes, directly to the worker whose notes were being transcribed.

However, Mr. Carter had never expressed that objection aloud to Mrs. Harvey or anyone.

Mr. Carter testified upon the Inquiry that it was important that there be speedy determination

of the issues as to whether the Society should have wardship of Kim so that the Society could set out its plans and goals for her and so that the parents might know what was to occur.

He seemed to be saying that the Society had not until then established goals for the management of Kim's case. His comments as recorded in the Society's file supports that view. There is no written record of any goals having been considered or established.

This contradicts Mrs. Harvey who, in her evidence, indicated that certain actions were taken by her, particularly the establishment of the "working hypothesis" that Kim was to be returned to her parents' home, provided some goals set by the Society were achieved. She said those goals included particularly:

"an improved relationship between the parents, better child care techniques and a relationship established between [the Society] and the family."

None of the records of the Society support her evidence. I do not accept it.

Clearly on the facts that desirable objective, stated only upon this Inquiry, was not attained in Kim's case. For all practical purposes six months elapsed from the time Kim came into the custody and care of the Society on August 31, 1975 until the conclusion of the hearing of the Society's application on February 25, 1976 when Kim was found to be a child in need of protection and was made a ward of the Society for a period of six months.

Mr. Carter's evidence was clear that, until the conclusion of the Court proceedings on February 25, 1976, he felt the Society was not in a position to plan for Kim's future and he had not begun to develop any such plans.

Thus it seems to me that, from August 31, 1975 to February 25, 1976, the Family Services Department of the Society did no more than purport to prepare for the hearing of the application brought by

the Society to have Kim placed in the care and custody of the Society.

It is equally clear that Mrs. Harvey is not correct in her testimony to suggest that the Society had established goals for Kim.

Thus in this period a fourth arc in the circle of tragedy ringing Kim was formed by the failure of the Family Services Department of the Society to perform all of its usual procedures and the fifth arc in that circle, the second of two major arcs, the decision to return Kim to her parents, was made by Mrs. Harvey.

Chapter IX

Significant Events in Kim's Life from February 25 to August 11, 1976

On or about February 25, 1976, Mrs. Harvey advised Mr. Carter that he would be relieved of responsibility for management of Kim's case after the order for wardship was made. She told him that the case was to be transferred to Mrs. Lo.

Mr. Carter's evidence was that it was announced to him as Mrs. Harvey and he left the Provincial Court (Family Division) of the County of Lambton, which hereafter in this Chapter shall be called the "Court", on February 25, 1976. He said the only explanation given to him was that it was "for ethnic reasons." Soon after that he dictated a long summary of events as he knew them from September 1, 1975 to February 29, 1976, he having selected that date for the sake of convenience, it being the last day of the month.

His notes reveal that during the period of September 8 to October 22, 1975 the Society received detailed information as to Kim's various periods in hospital from March 22, 1975, April 22, 1975 (sic) and August 31, 1975, along with Dr. Singh's discharge report, all of which he indicated were in the Society's file. His notes indicated that all of this was "self-explanatory." I can only conclude and presume he meant that it was clear that Kim was the victim of abuse.

As to the conclusion of the Society's application for wardship on February 25, 1976 Mr. Carter wrote that Annals Popen was to receive psychiatric help, he and Jennifer Popen were to attend the Parent Effectiveness Training Course, the Society were to supervise their home weekly and Kim's visits to the home were to be supervised by the Society.

It would seem that Mr. Carter equated "psychiatric help" with "[doing something] about his alcohol problem," the words used by Judge Nighswander

in his reasons for judgement. I do not know the basis for his comments as to the Parent Effectiveness Training Course and the supervision by the Society of the home and of Kim's visits. Judge Nighswander's reasons for judgement make no mention of those matters.

Mr. Carter set forth lengthy personal observations. He wrote of Jennifer Popen as being a "proverbial liar" and "her usual evasive self" and that she was

"young [and] inexperienced"

as a mother.

He wrote of circumstances in the family and difficulties in that familial relationship, including Jennifer Popen's isolation from Annals Popen's "extended families." He wrote of Mrs. Popen's handling of Kim.

He wrote of Jennifer Popen's health and possible problems in that connection -- including unexplained "blackouts" in respect of which Mr. Carter noted Annals Popen was not aware or

"Mrs. Popen is lying again"

and her pregnancy which at times she denied.

All of this would seem to indicate that Mr. Carter had some substantial reservations as to the credibility of Jennifer Popen. In retrospect those reservations were well-founded. Mrs. Lo and Mrs. Harvey, had they read his observations, were certainly forewarned.

Mr. Carter said he did not meet with Mrs. Lo to discuss any of this or any other matter in connection with Kim or the Popen family or the transfer of the case from him to Mrs. Lo. He said Mrs. Lo would have had access to his notes as recorded in the file, but he felt the typewritten transcript did not contain all of his notes.

There is no evidence as to when his notes, transcribed or otherwise, were placed in the file and thus available to Mrs. Harvey and Mrs. Lo. I am not

satisfied that either Mrs. Harvey or Mrs. Lo read Mr. Carter's recordings at any time during Kim's life.

In fairness, the omissions or errors mentioned by Mr. Carter seemed to me to be of little consequence. But one is left to wonder whether there were errors or omissions, not only in Mr. Carter's recordings, but in all of the Society's recordings, that may have been of significance.

I have little faith in the reliance that one may place upon the Society's recordings, particularly in the Family Services Department, which were produced upon the Inquiry. In the Children's Services Department it seemed to be the practice that the worker who dictated the recordings did have an opportunity to compare the transcript with original notes and, presumably, to correct the transcript if necessary. That apparently was not so in the Family Services Department. Even in the Children's Services Department that opportunity was not always exercised, or was demonstrated in the instance of Mrs. Kirby's recording dated April 26, 1976.

Similarly it is clear to me that a discussion between the retiring social worker and the incoming social worker, Mr. Carter and Mrs. Lo in this instance, would have been invaluable. Mr. Carter could enlarge upon his notes. Mrs. Lo could ask for explanation and comment and receive it.

Mr. Carter testified that ordinarily transfer of a case was effected only after a discussion of it by the "team" of workers involved, and the Supervisor. He said "team" meetings were called specifically to discuss transfers.

While the usual procedure was not followed in this instance and while he did not agree that the case should be transferred to Mrs. Lo, Mr. Carter was not upset by those facts.

However, he did feel that when any case was transferred it would be of assistance to the newly assigned worker to have a complete oral briefing from the worker who had previously managed the case. The logic of that position seems to me to be incontrovertible.

Mrs. Harvey's memory, a rather shaky foundation, was that, prior to February 25, 1976, she had advised Mr. Carter that the case would be assigned to Mrs. Lo who would be in Court to hear the evidence presented. There was no testimony presented upon the Inquiry that Mrs. Lo was in Court when evidence was presented on February 23, 1976 upon Annals Popen's trial under section 40 of The Child Welfare Act. Mrs. Lo testified that she was not in Court during the wardship application on February 25, 1976. That was when witnesses were called and the summary of evidence at Annals Popen's trial on February 23, 1976, was accepted as evidence upon the wardship application and reasons for judgement were delivered by Judge Nighswander. Thus, if Mrs. Harvey did have any such intention that Mrs. Lo be present to hear the evidence, that intention was not fulfilled.

Mrs. Lo was in Court for Annals Popen's sentencing on March 29, 1976.

I prefer Mr. Carter's evidence to that of Mrs. Harvey as to when she informed him of the transfer of Kim's case.

Mrs. Harvey said she made the decision because Mr. Carter had a very heavy caseload and she wanted Kim's case to receive a great deal of service. She had decided Mrs. Lo could provide that service notwithstanding Mr. Carter's experience, expertise and community resources and Mrs. Lo's apparent lack thereof.

Mrs. Harvey denied that she had told Mr. Carter that the transfer was made "for ethnic reasons."

I prefer Mr. Carter's evidence to that of Mrs. Harvey on that point.

Mrs. Harvey testified that, in addition to easing Mr. Carter's workload, factors in her decision were that Mrs. Lo was closer in age to Jennifer Popen and also had a young child, that Mrs. Lo had a confident manner and absorbed information quickly and that Mrs. Lo was liked and respected by others of Society's staff.

Mrs. Harvey added that she had intended to give Mrs. Lo "intensively close supervision" although she was satisfied that Mrs. Lo had received "really quite intensive training." That training, according to Mrs. Harvey, consisted of being in the same room as an experienced worker for a month, thus picking up tips on performing her duties, and of attending team meetings and weekly supervisory meetings or discussions with Mrs. Harvey.

Those reasons which Mrs. Harvey gives for the transfer of Kim's case from Mr. Carter to Mrs. Lo appear to me to be shallow and hollow and without substance.

I am unable to determine the real basis for Mrs. Harvey's decision to transfer Kim's case to Mrs. Lo. No witness with professional qualifications in social work expressed an opinion providing any support for that transfer. All who were asked expressed opinions that the transfer was inappropriate.

The "really quite intensive training," to use Mrs. Harvey's phrase, which Mrs. Lo received was, in my opinion, nothing of the sort. It too was without substance. The "intensively close supervision" which Mrs. Harvey intended to give to Mrs. Lo did not materialize.

Mrs. Lo began her duties in relation to Kim by a visit to Jennifer Popen at her home on February 27, 1976.

Mrs. Lo had begun her employment with the Society on December 5, 1975 as a social worker, Class I, the lowest category of social worker in the structure of the Society. She was placed in the Family Services Department. She had been interviewed only by Mrs. Harvey prior to her employment by the Society. Mrs. Harvey effected that employment.

Mrs. Lo had no specific training or background in social work. She had taken some peripherally related courses such as child development, social psychology, sociology and psychology while attaining a degree in Elementary Education from the University of Connecticut in 1972. It would seem to me to be apparent that, despite Mrs. Lo's intelligence and willingness, those courses did not qualify

her to administer a case such as Kim's with parents such as Annals Popen and Jennifer Popen.

From Mrs. Lo's evidence it was clear to me that she received no formal period of training or instruction in her duties, but merely had the opportunity to observe how other social workers in the Family Services Department performed some of their duties. The skills, experience, education and training of those other social workers were not presented in testimony. What Mrs. Lo observed them doing was not presented in any great detail. She did hear a worker or perhaps workers engaged in telephone conversations, but of course could not hear what was said by the person to whom the Society's worker was speaking. I have no way of fully assessing the value of whatever Mrs. Lo may have gained from such observations, but I would think it would be of little assistance to her in duties relevant to Kim's case the only then documented current child abuse matter in the Society.

There was nothing to indicate that any of the situations handled by those social workers while Mrs. Lo observed them in any way corresponded to the circumstances of Kim's life.

In the vernacular, Mrs. Lo entered upon her assignment to Kim's case "blind". She had no idea of the significance of that assignment or its ramifications or intricacies or subtleties or really what was expected or required of her and what she was to do and what she could require anyone to do.

In retrospect one can only sympathize with Mrs. Lo. She was thrown by Mrs. Harvey into a situation well beyond her depth. It was probably well beyond the depth of many social workers who were qualified beyond Mrs. Lo's training and experience which consisted merely of observing for a few weeks how other social workers dealt with cases much less complicated than was Kim's case.

Mrs. Lo testified that shortly before the wardship hearing on February 25, 1976, Mrs. Harvey informed her of Kim's case, with some information as to the injuries Kim had suffered and as to the attitude of her parents toward Mr. Carter. Mrs. Lo said she understood the parents were very hostile

toward Mr. Carter and refused to talk to him. Her testimony was that Mrs. Harvey told her the case would be transferred to her because her child was about Kim's age and her own age was closer to that of Jennifer Popen so that it would probably be easier for Jennifer Popen to relate to her than to Mr. Carter. Mrs. Lo testified that Mrs. Harvey mentioned that having a personality different from that of Mr. Carter might make it easier for Mrs. Lo to work with the parents.

While Mrs. Lo recalled no reference having been made to her own ethnic background, she did feel that the fact that she too was a recent immigrant to Canada was a factor in Mrs. Harvey's belief that it would be easier for Mrs. Lo than for Mr. Carter to work with Jennifer Popen.

It seems to me that by transferring Kim's case to Mrs. Lo, Mrs. Harvey really acceded to Jennifer Popen's wishes. Mr. Carter was an experienced social worker and clearly was suspicious of Jennifer Popen. While he did not assert himself as forcefully as he might have I am sure that Jennifer Popen sensed that Mr. Carter was not going to believe all that she told him and would perhaps learn what really were the causes of and circumstances surrounding Kim's injuries.

I have written of Jennifer Popen's intuition and her ability to manipulate people. This would seem to be an instance of it. Mrs. Harvey played right into Jennifer Popen's hand.

Kim's case was the first case involving child abuse in which Mrs. Lo was involved. In January, 1976, she had worked upon about ten cases. I gather none of those ten cases was as serious or had the complications which Kim's case presented. Just what work she did on those cases was not explained.

On receiving the case and in preparation for her duties Mrs. Lo read the Family Services Department's file on Kim. At that time Mr. Carter's dictation for the period from September 1, 1975 to February 29, 1976 had not been transcribed. There was no evidence as to when it was transcribed. Her recollection was she received that transcription

shortly, perhaps a couple of days, after her initial visit with Jennifer Popen on February 27, 1976, but I am left to wonder when that was or when Mrs. Lo read it.

Thus, apparently all that Mrs. Lo saw in the file at the outset of her involvement in Kim's case was the note dealing with the June 17, 1975 visit of Mesdames Saul and Hoad and Police Constable Gander to the Popen home and the note of the events at the hospital on August 31, 1975 recorded by Mrs. Dick. That in total is about two and one half pages. That would not take long to read nor would it be of much use to Mrs. Lo in her assignment.

Mrs. Lo testified that on receiving the file she was aware that the Society had obtained wardship of Kim for a period of six months from February 25, 1976 and that the goal of the case was to return Kim to her home at the expiration of that time unless there were some special reason not to do so. All of that clearly emanated from Mrs. Harvey. Mrs. Lo was not present at the hearing of the Society's application. She was present at Annals Popen's trial under section 40 of The Child Welfare Act only on March 29, 1976 when sentence was awarded. She had not spoken with Mr. Carter and chose not to seek him out for information.

Mrs. Lo was quite frank to acknowledge that she was not aware of the provisions of The Child Welfare Act and the procedure that the Society might have taken thereunder if so advised during or at the expiration of the initial period of wardship. She said she may have known that in some cases wardship could be extended, but she did not feel wardship of Kim could be extended or, if it could, she felt it would be difficult to obtain the necessary court order. She seemed to feel that having obtained an order for six months' wardship, the Society would have little chance of obtaining Crown wardship later or even an extension of the Society's wardship. That seems to me to indicate a woeful lack of knowledge of the provisions and application of The Child Welfare Act.

Mrs. Lo was aware, from Mrs. Harvey, that members of the Sarnia Police Force and others had strong feelings about the case, and that some of

those feelings related to the question of Kim's return to her home. Mrs. Lo did not discuss the case with Police Constable Wyville or Mr. Carter, but did speak with Mrs. Kirby, the child care worker in the Society. Had Mrs. Lo spoken with Police Constable Wyville or Mr. Carter, she might have looked on Kim's case somewhat differently.

Mrs. Lo had a number of visits with Jennifer Popen in the Popen home and discussed with her a variety of subjects, including her family and life experiences in Jamaica. Mrs. Lo felt that Jennifer Popen was receptive to her, but yet was evasive in her answers. Mrs. Lo testified that while discussing Kim's injuries, Jennifer Popen said that

"no matter how frustrated that she [Jennifer Popen] got she could not strike out at her child and that she knew she had not hurt the child before and was covering up,"

but then Jennifer Popen declined any further discussion.

Mrs. Harvey testified that that comment by Jennifer Popen was "another clear indication that it was Jennifer [Popen]" who had abused Kim. Mrs. Harvey said she conveyed that opinion to Mrs. Lo.

Mrs. Lo said she did not know who had caused Kim's injuries. She testified that was so despite Mrs. Harvey's testimony as to her belief that Jennifer Popen was the one who abused Kim and that she had informed Mrs. Lo of that belief.

One account related to Mrs. Lo was that Annals Popen abused Kim when drunk. Another was that "they suspected" Jennifer Popen was abusing Kim. In the light of Mrs. Lo's sources of information I can only conclude that "they" included Mrs. Harvey.

Mrs. Harvey did testify that she advised Mrs. Lo that she was "pretty sure" that Jennifer Popen was abusing Kim and that, regardless of any finding by the Court against Annals Popen, the Society should focus its attention on Jennifer Popen and only collaterally work with Annals Popen and his Probation Officer

"because we were sure she was the one."

In the final analysis, the Society did not focus its attention on Jennifer Popen or on anyone.

Mrs. Kirby in her testimony voiced some similar intuitive suspicion of Jennifer Popen based on her observations. She said she stated those suspicions to Mrs. Archer, her supervisor. There was no firm evidence that she mentioned those suspicions to Mrs. Lo. Mrs. Kirby did testify that she believed she had discussed those suspicions with Mrs. Lo. Those suspicions entertained by Mrs. Kirby were in addition to any suspicions she had as to Annals Popen's involvement.

It would seem that Mrs. Lo did not really absorb the significance of all of this. As late as her recording under date May 6, 1976 she wrote:

"I let Mr. Popen know at the present time my main concern is with him"

and went on to write about her encouragement of him

"to work harder."

It was interesting to me to note that Mrs. Lo did not feel that her role included investigation to determine who had abused Kim. The rationale of that entirely escapes me.

She said she was there to help both parent and child. I can accept that as far as it goes. It does not go far enough. I can only wonder how she could help both parent and child unless she had some knowledge or belief as to who was abusing Kim and as to the reason for such abuse.

Mrs. Lo testified that Jennifer Popen would state that Annals Popen was responsible and he, in turn, would say that he was drinking and probably did it. Mrs. Lo did not go beyond that to inquire as to why Annals Popen felt he had "probably" done it. Mrs. Lo testified that Annals Popen did not admit that he had inflicted any specific injury upon Kim.

On March 29, 1976 Annals Popen appeared in the Court to be sentenced upon the charge under

section 40 of The Child Welfare Act. Sentence was suspended for one year and he was placed on probation. In addition to terms that he be of good behaviour, report to a probation officer and appear in court when called upon, he was required to abstain totally from alcoholic beverages and to take treatment for alcoholism.

In addition to her visits with Kim's parents, Mrs. Lo was present when Kim visited with her parents in their home on a weekly basis for four weeks in April, 1976. Mrs. Lo observed the relationship of the child and parents during these visits. These visits were begun as a part of the normal procedure of the Society in preparation for the return of a child to the parents' home.

There was some confusing and conflicting testimony, but early in May, 1976, either on May 6 or May 7, Mrs. Harvey, Supervisor of the Family Services Department, Mrs. Archer, Supervisor of the Children's Services Department, Mrs. Kirby, the child care worker, and Mrs. Lo met at the Society's offices. Because of difficulties in the foster home created by Kim when she returned there after her visits to her parents' home, it was decided at that time that those visits should be discontinued. In her recording under date May 6, 1976, Mrs. Lo wrote:

"The home visits have been proven to be very disruptive to Kim."

Mrs. Lo's impression of that meeting was that, in addition to the discussion leading to that decision, there was discussion as to when Kim would be returned to the care of her parents in their home. Mrs. Lo's impression was that the decision that Kim would be returned to her home had been made months before and all that remained to be decided in May 1976 was the timing of that return.

From the evidence of Mrs. Archer, Mrs. Kirby and Mrs. Harvey, I am satisfied that Mrs. Lo's impression of the subject matter of that discussion on May 6 or 7, 1976 was correct.

Mrs. Archer said she assumed that the decision to return Kim was made before Kim's first visit to her home on April 9, 1976. She said she was

not a party to, nor was she consulted about that decision.

It was clear to me that within the Society it was accepted that the role of the Family Services Department was dominant to that of the Children's Services Department in any case where both departments were involved with the same family and where there might have been a difference of opinion between the personnel of the two departments. It seemed to be accepted that the Family Services Department had a broader perspective of the situation in the family and that the Children's Services Department was responsible only for any child of the family who was in the care of the Society.

That principle operated in Kim's case. It was accepted that the Family Services Department was responsible for any decision as to whether or when Kim would be returned to her parents.

Mrs. Kirby recalled a conversation with Mrs. Lo about the end of March, 1976 wherein Mrs. Lo informed her that efforts would be made to return Kim to her home by the end of May. As a result Mrs. Kirby and Mrs. Lo discussed how Kim would be integrated back into the home. With Mrs. Harvey they decided that it would be wise to begin visits by Kim to her parents' home. Jennifer Popen's pregnancy was a factor in the discussion and decision. Mrs. Kirby said that on May 7, 1976, the decision to return Kim had been made and it was just a matter of how that return was to be managed.

Mrs. Kirby was not consulted on the question as to whether Kim should be returned to her home. She was not a party to the decision. Indeed on February 19, 1976 she spoke against it in the meeting with Mrs. Harvey attended also by Mr. Carter and Police Constables Wyville and Charlton.

Mrs. Harvey testified that as early as February 19, 1976, the date of what I choose to call Mrs. Harvey's encounter with Mrs. Kirby, Mr. Carter and Police Constables Wyville and Charlton, she had decided or had plans to return Kim to her parents' home "eventually." I gathered that had been her intention virtually from the outset of Kim's case, formally, on August 31, 1975.

At that meeting on May 6 or 7, 1976, it was decided that Kim should be returned home before, rather than after, the birth of Jennifer Popen's next child whose birth was expected to occur early in July. The decision was that Kim would be returned home on May 27, 1976.

Thus the penultimate arc in what I have called the ring of tragedy surrounding Kim was formed.

The final arc in that ring of tragedy was the continued reliance of the Society, as represented by Mrs. Harvey, upon the abilities and skills of Mrs. Lo without meaningful instruction by Mrs. Harvey as to how Mrs. Lo should perform her duties. Mrs. Harvey was responsible for the lack of instruction to Mrs. Lo.

Mrs. Harvey acknowledged in her testimony that, in retrospect at least, she was bothered by the fact that, without any explanation apparent to her as she testified, she had not instructed or ordered Mrs. Lo to arrange for frequent medical examinations of Kim after her return to her parents' home. Without any intervening court order Kim remained in the care and custody of the Society after May 27, 1976 and it was within the power and control of the Society to insist upon such medical examinations.

By failing to arrange for such medical examinations the Society, as represented by Mrs. Harvey and Mrs. Lo, was remiss in its duty to protect Kim.

Such medical examinations would have served two purposes. They would have revealed any injury which Kim may have suffered. It is reasonable to assume that if Jennifer Popen had been advised that Kim was to be examined at intervals, she, Jennifer Popen, might not have injured Kim.

Even from her own testimony I gather that Mrs. Harvey was not specific in her instructions to Mrs. Lo. She merely instructed Mrs. Lo to watch very carefully for any bruise on or any change in Kim. That was not sufficient instruction to a novice such as Mrs. Lo. Mrs. Harvey did not even instruct Mrs. Lo to undress Kim to enable a complete examination of Kim's body to detect even those injuries or indicia

of abuse that might have been apparent to one as unskilled and inexperienced as Mrs. Lo. There was no reference by Mrs. Harvey to the possibility of sexual or emotional abuse or nutritional deprivation and the indicia thereof.

Such a visual examination by Mrs. Lo or any social worker could not replace an examination by a medical doctor. But it would be better than no examination.

Mrs. Harvey was remiss in not instructing Mrs. Lo to make such examinations of Kim.

Mrs. Harvey, in her statement to the Investigators for the Inquiry and in her evidence, seemed to place some reliance upon the fact that, as arranged by the Society, Jennifer Popen and Annals Popen were attending the Parent Effectiveness Training Course. That Course was designed to teach parenting skills. It was not directly related to the prevention of child abuse. Even Mrs. Harvey did not say that she felt that the Course would be of particular benefit to Jennifer Popen and Annals Popen and thus to Kim.

By the time of the meeting on May 6 or 7, 1976, only two, at the most, sessions of that Course had been conducted. They were on April 26 and May 3, 1976. There is no clear evidence that Annals Popen and Jennifer Popen or either of them had attended either or both of those sessions or had derived any benefit therefrom if they did attend. Mrs. Harvey's evidence indicates that Annals Popen and Jennifer Popen were having some difficulty in coping with the Course and had missed some of the sessions when Jennifer Popen was not feeling well. That is similar to the evidence of Mrs. Maughan, the volunteer Probation Officer.

Until Kim's return home on May 27, 1976, Mrs. Kirby had maintained a file containing a record of the handling of Kim's case by the Children's Services Department of the Society and of her visits with her parents. To all intents and purposes that record was completed by Mrs. Kirby as of May 27, 1976. At some later time, Mrs. Harvey dictated, for transcription in that record, a summary of what appeared in the Family Services Department's file

from April 15, 1976 to August 11, 1976. Mrs. Kirby had intended to close the Children's Services Department's file on Kim as of May 27, 1976, but Mrs. Archer, her supervisor in the Children's Services Department, informed her that that was wrong procedurally and that that file had to be maintained as an open file so long as Kim remained a ward of the Society.

Mrs. Harvey's evidence was that it had been the practice of the Society to close a file once the child was returned home. She testified that she was not aware of any error in that procedure until sometime in 1977 when Mr. Stephen Charko, Supervisor of Field Services, Child Welfare Branch of the Ministry of Community and Social Services, drew it to her attention. As a result, she dictated into the Child Care File the summary of what was recorded in the Family Services file for the period from April 15, 1976 to Kim's death.

It is not clear to me when Mrs. Archer informed Mrs. Kirby of this or when Mr. Charko informed Mrs. Harvey of it.

It is clear that the Society had no well defined and understood procedures as to maintenance of files and recordings in particular situations. Mrs. Harvey and Mrs. Kirby had one understanding; Mrs. Archer had another. It would seem that Mrs. Archer's understanding as to the correct procedure was that required by the Ministry of Community and Social Services as represented by Mr. Charko.

Mr. Brouwer and Mrs. Maughan testified as to the involvement of the Ministry of Correctional Services with the Popen family after March 29, 1976. Nine of the monthly report sheets prepared by Mrs. Maughan were presented as exhibits.

The Ministry of Correctional Services, through Mr. Brouwer, first became involved with the Popen family on February 23, 1976 when the pre-sentence report was requested following Annals Popen's plea of guilty to the charge under section 40 of The Child Welfare Act. The Court's request was assigned to Mr. Brouwer.

That report was considered when sentence was imposed on March 29, 1976. It made reference to Annals Popen's problem with alcohol, but indicated that his attendance at Alcoholics Anonymous and the involvement of the Society with Kim's parents were leading them to a more positive attitude with reference to their problems. The source of that information is not stated in the pre-sentence report. The report referred to similar feelings expressed by Mrs. Lo and to the eight-week Parent Effectiveness Training Course to be attended by Annals Popen and Jennifer Popen commencing late in April 1976.

It would seem that in writing the pre-sentence report Mr. Brouwer relied to a great extent upon Mrs. Lo's comments and assessment of the situation. When one considers Mrs. Lo's lack of training and experience and her slight contact with the Popen family to that time, it is unfortunate that she was the only member of the Society's staff whom Mr. Brouwer approached. Mr. Carter might have been a source of greater and more reliable information.

Mrs. Lo's recording in the Society's records and her testimony upon the Inquiry indicate that her only contact with the Popen family prior to March 29, 1976 consisted of visits with Jennifer Popen on February 27 and March 4 and with both Annals Popen and Jennifer Popen on March 18, 1976. Thus, at least until then, most of Mrs. Lo's contact was with Jennifer Popen whose capacity to tell stories and mislead people was demonstrated upon the Inquiry.

If I understand the evidence correctly, Mr. Brouwer's only discussion with Mrs. Lo with reference to the preparation of the pre-sentence report was on March 5, 1976. That was nine days after she was assigned to the case and before she had met Annals Popen who was the subject of the pre-sentence report.

As Mr. Brouwer put it in his evidence, Mrs. Lo told him "not that much." The pre-sentence report does not indicate that when he wrote it he felt that what Mrs. Lo told him was "not that much."

In the paragraph of the pre-sentence report referring to the Society and Mrs. Lo there seems to be an air of optimism resulting from Annals Popen's

contact with the Society and from his intended enrolment in the Parent Effectiveness Training Course.

It is unfortunate that Mr. Brouwer did not persist in any effort he may have made to speak with Police Constable Wyville. That is particularly so in the light of Mrs. Lo's having told him "not that much" and his having no source of current information totally independent of Annals Popen and Jennifer Popen.

The pre-sentence report can be no better than its sources of information. This one leaned heavily on unreliable sources, Annals Popen and Jennifer Popen, and did not avail itself of what I would believe to be more reliable sources, Police Constable Wyville and Mr. Carter.

If Mrs. Lo told him "not that much," Mr. Brouwer should have interviewed others at the Society. Mrs. Lo did tell him she had just been assigned to the case. He should have spoken to her predecessor, Mr. Carter.

Mr. Brouwer in preparing the pre-sentence report had access to the brief prepared by Police Constable Wyville for the Crown Attorney. That brief clearly shows that Mr. Carter was involved in the case. Mr. Brouwer's failure to interview Mr. Carter or anyone else at the Society and his failure to interview any police officer, cause me to doubt the validity and value of the pre-sentence report apart from its inclusion of Dr. Curtin's report. Mr. Brouwer did not even try to interview Mr. Carter and in his testimony he acknowledged he was not really certain he had tried to interview any police officer.

On the basis of Mr. Lang's evidence that the sentence awarded to Annals Popen caused him, as Crown Attorney, no concern, it would seem that, whatever my assessment of the pre-sentence report and its basis, an appropriate result was obtained insofar as the sentence imposed upon Annals Popen was concerned. That is not to say that the result was an appropriate means of protecting Kim.

The pre-sentence report contained Jennifer Popen's explanation for the injury that led to Kim's first hospitalization with a broken arm in March 1975. That explanation was that Kim had merely rolled over in her crib and fell from it because the side was down. That was a false explanation. The transcript of the trial proceedings in the Court shows that Judge Nighswander was aware of the other explanation for that injury given by Jennifer Popen to Dr. Singh, that is that it occurred while she was dressing Kim. Judge Nighswander did not accept that explanation contained in the pre-sentence report or other explanations given for other injuries.

Attached to the pre-sentence report was a report on Annals Popen dated March 19, 1976 prepared by Dr. Curtin. That report indicates that Dr. Curtin found it difficult to obtain any detailed information. While Dr. Curtin suggested that Annals Popen's attendance at Alcoholics Anonymous and the Parent Effectiveness Training Course and the willingness of the parents to grant to the Society and The Lambton Health Unit access to their home to check on Kim would minimize the danger of abuse of Kim in the future, he continued as follows:

"I am really unable to give any opinion as to the likelihood of a repetition at a future date, because I cannot assess in any depth the emotional make-up of Mr. Popen. He denies ever having been abused himself as a child and in fact, my enquiries from him yield such little abnormality that I wonder about his reliability as an informant. I would think therefore, that a more accurate assessment of his emotional state will likely result from objective enquiries rather than from any enquiries I might make from himself or his wife. In taking a family history past and personal, again I find it so bland that I have to wonder about the reliability of it."

Dr. Curtin attached to his report a copy of a consultation note he had made following an interview on October 22, 1975 with Jennifer Popen who had been referred to him by Dr. Gamula. I presume this followed her visit to Dr. Gamula in respect of her temper. Two paragraphs in that consultation report

were repeated by Dr. Curtin in his report of September 22, 1977 to Mr. Higgins. They read as follows:

"Mrs. Popen impresses me as being a somewhat unreliable informant and she appears rather guarded and evasive in the interview situation. She is not able to give me any explanation that seems adequate or feasible to me with regard to how her baby got hurt physically. I find it very difficult to communicate meaningfully with Mrs. Popen and she seems poorly able to think in abstract terms. I wonder about her intellectual level, her degree of formal education or language difficulty, as contributing to the difficulty in communication."..."In brief then all I can say is that I was not impressed as to her degree of reliability as an informant and I would consider her an emotionally deprived person. She does not impress me as being a very stable person emotionally. None of the facts of the case are available to me and therefore there is little else I can say here."

Although Mrs. Lo was aware of its existence and was in Court when it was considered on March 29, 1976, she made no effort to see the pre-sentence report and the reports and consultation note attached to it.

In March 1976 the Society had available to it Dr. Curtin's assessment of both of Kim's parents and particularly his concern as to their reliability as informants, his inability to express any opinion as to the likelihood of any repetition of abuse of Kim and his assessment of Jennifer Popen as being emotionally deprived and not very stable emotionally.

From time to time during the Inquiry, counsel or witnesses used the expression "danger signal" or some similar expression with reference to circumstances which might be indicia of situations which might become incidents of child abuse. With knowledge of what had occurred and what injuries Kim had suffered and the suspicions which the Society's

personnel themselves testified they had as to Jennifer Popen's involvement in Kim's injuries, that report by Dr. Curtin must certainly have been a danger signal.

It should have been seen and recognized as such by the Society.

Had anyone from the Society seen fit to read the complete pre-sentence report, any suspicion as to Jennifer Popen's involvement in the abuse of Kim might have been heightened. Someone at the Society might have then seen fit to undertake some investigation to resolve, one way or another, any such suspicion or doubt. Thus the whole plan for the management of Kim's care by the Society, if indeed there was any plan for her care formulated by the Society, might have been amended and unfortunate decisions might not have been made.

Mrs. Lo and perhaps Mr. Carter and thus the Society were aware of the pre-sentence report. The Society could and should have sought access to it and read it.

If Mrs. Harvey was giving Mrs. Lo the intensive supervision she said she intended to give her Mrs. Harvey could and should have been aware of the contents of and should have read the pre-sentence report and its attachments. There is no evidence to indicate that Mrs. Harvey was aware of the contents of or read the pre-sentence report.

I am not satisfied that Mrs. Lo read it. She testified that she did obtain some information about it and Dr. Curtin's report from Mr. Brouwer, but her recording in the Society's files does not disclose that fact or the nature of the information.

Mr. Brouwer, author of the pre-sentence report, was assigned to supervise Annals Popen's probation. He was assisted by Mrs. Catherine Maughan.

Mr. Brouwer met both Annals Popen and Jennifer Popen in his office in the courthouse in Sarnia on February 23, 1976. On March 4, 1976, he interviewed Jennifer Popen alone in her home. He did not then see Kim. He was told she was not at home.

As to his meetings with Annals Popen and Jennifer Popen, Mr. Brouwer testified, as he wrote in the pre-sentence report, that Annals Popen seemed to be very withdrawn and very quiet. He said that most often Jennifer Popen would answer questions addressed to Annals Popen. He said that when he spoke with Annals Popen in the absence of Jennifer Popen he found that, while not unco-operative, Annals Popen was very hesitant in his responses and had difficulty expressing himself.

Mr. Brouwer went on to say that the answers given by Jennifer Popen and Annals Popen were very vague and, as a result, Mr. Brouwer was unable to form any opinion as to who had abused Kim. He said it appeared it may have been Annals Popen because of his drinking, but he was not certain.

Mr. Brouwer did have access to the brief prepared by Police Constable Wyville for the Crown Attorney; so he was aware of the various prior incidents of injury to Kim. He said Jennifer Popen told him that Kim's broken arm of March 22, 1975 had been caused by an accidental fall from her crib. He said he accepted that explanation and made no effort to check the truth of that explanation.

As to Kim's injuries discovered when she was admitted to hospital on August 31, 1975, he said:

"[Annals Popen] could not remember anything at all about that incident. He had been drinking and although he pleaded guilty he told me he was told by others that he had done that."

In his testimony upon the Inquiry, Mr. Brouwer made specific reference to the assessment set forth on the final page of the pre-sentence report. In that assessment he had stated his difficulty in determining if Annals Popen's problems were due only to his drinking or if there were "other underlying causes."

Had anyone from the Society seen fit to read the pre-sentence report, they would have been alerted to the probability that all was not as it might seem on the surface and that other areas might merit investigation or inquiry by the Society. Such

investigation or inquiry by the Society would have been necessary in performance of its duty to protect Kim, who had been found by Judge Nighswander to be a child in need of protection and who had been placed by him in its care and custody for a period of six months.

In addition to seeing Annals Popen on March 29, 1976, Mr. Brouwer saw him, during Kim's lifetime, on April 21, May 21 and June 18, 1976. All of these visits were in the Ministry's offices. He said that on all occasions Annals Popen spoke of his love for Kim.

Mr. Brouwer was told by Jennifer Popen, Annals Popen and Mr. Vandenburghe that Annals Popen was no longer drinking and was responding quite well in the programme of Alcoholics Anonymous.

Mrs. Lo was at the Popen home when Mr. Brouwer arrived there on March 4, 1976. He saw her in her office on March 5, 1976, but he did not seek permission to examine any of the Society's files with reference to Kim or her family. He said the Society's file was there and Mrs. Lo used it in replying to his questions. He said she seemed hesitant to give him information, but did answer all of his questions.

As to his meeting with Mrs. Lo on March 5, 1976, Mr. Brouwer, when asked what Mrs. Lo told him, replied:

"Not that much. She had not seen Annals Popen at that time."

He went on to say that Mrs. Lo told him she was arranging for Jennifer Popen and Annals Popen to take a Parent Effectiveness Training Course and that Annals Popen had attended Alcoholics Anonymous meetings for about three and a half months. He said Mrs. Lo told him that Annals Popen wanted Kim to be returned to her family home.

Mr. Brouwer testified that Mrs. Lo

"indicated to [him] too that initially everyone [at the Society] thought Jennifer Popen was the one who had abused [Kim]."

He went on to say that Mrs. Lo indicated that, as a result of the proceedings in the Court, the Society assumed Annals Popen, not Jennifer Popen, had abused Kim. He said the pre-sentence report was prepared on that same basis.

Mr. Brouwer also spoke with Mr. and Mrs. Vandenburghe before writing the pre-sentence report.

The Ministry of Correctional Services arranged for an appointment for Annals Popen to see Dr. Curtin. Dr. Curtin reported thereon by letter dated March 19, 1976, attached to the pre-sentence report. I have already mentioned that letter.

Mr. Brouwer said that shortly after Kim's return to her home on May 27, 1976, he telephoned Mrs. Lo to inquire as to how the parents were progressing in the Parent Effectiveness Training Course. He said Mrs. Lo told him then that the Society's involvement with the family was decreasing and that the Parent Effectiveness Training Course was completed or almost completed. He said Mrs. Lo did not indicate that her visits to the Popen home would be fewer.

Mr. Brouwer said he made that telephone call out of a continuing concern for Kim's welfare.

It is of interest to note that this communication between agencies or departments originated with the Probation Service. It was not initiated by the Society. Almost without exception any communication between another agency and the Society which was mentioned in any way upon the Inquiry originated with the other agency. That seems to indicate a rather insular attitude on the part of the Society. In the face of such an attitude it seems to me that it ill behoves the Society's personnel to be critical, as some were in their testimony upon the Inquiry, that others did not keep the Society informed of events.

Mr. Brouwer said that on July 26, 1976, Mrs. Lo telephoned him to advise him that the involvement of the Society would cease. This is the lone instance I recall wherein a fresh communication with another agency or governmental department was

originated by the Society. It was the exception to the insular attitude. It was of questionable value.

Mr. Brouwer testified that in that conversation Mrs. Lo expressed concern about the case. He testified that she told him that she felt both Annals Popen and Jennifer Popen were not truthful with her and were avoiding or not responding to her questions. He said that he read to Mrs. Lo the import of some portions of Mrs. Maughan's report as to her contacts with the Popen family in June, 1976.

As summarized by Mr. Brouwer in his evidence those portions related to Annals Popen and Jennifer Popen having taken the Parent Effectiveness Training Course, but went on to state that by their answers to Mrs. Maughan's questions they indicated that they had not fully absorbed it and did not understand some basic points of the Course. Other portions of Mrs. Maughan's report read to Mrs. Lo set forth improvements in Kim's sleeping habits as related to her by Annals Popen and Jennifer Popen.

Mr. Brouwer said he mentioned these matters to Mrs. Lo to learn her opinion of them. He said that Mrs. Lo told him that Kim's behaviour might not be as the parents reported to Mrs. Maughan and that the parents were making up stories.

Nonetheless Mrs. Lo told him the Society's involvement with the family was ceasing because the order of the Court was to expire in August.

Mr. Brouwer said that, while he had concern to insure that Kim was not abused again, his primary concern was with enforcement of the specific terms of the Probation Order with respect to Annals Popen. Thus, and because of the involvement of the Society and Alcoholics Anonymous, he felt that it would be sufficient for Annals Popen to report to him at his office on a monthly basis and he relied on the Society to conduct any visits to the home and to "keep an eye on [Kim]."

I think Mr. Brouwer correctly assessed the role of the Probation Service when he said he dealt with Annals Popen, that Jennifer Popen was not under its supervision, but that the family was, indirectly, a responsibility of the Probation Service, but that

the Society had a much heavier responsibility for Kim and was the dominant agency in the home.

On June 15, 1976, Mr. Brouwer transferred Annals Popen's file to Mrs. Maughan for day-to-day service, but he retained responsibility for it. He felt that by so doing his Ministry's supervision would be increased to meet the fact of Kim's return home and a decreasing involvement by the Society.

That latter reason must have been formulated in retrospect because he was not aware until Mrs. Lo's telephone call of July 26, 1976 that the Society's involvement would decrease.

He said that because of the other cases assigned to him he was not able to give the "more extensive involvement" that Mrs. Maughan would provide.

Thus it seems that the Ministry of Correctional Services too lacked personnel to provide, other than through a volunteer, the supervision which the nature of the case required.

I cannot help but note and mention the conjunction of events that resulted in Kim's case being handled for the Society by Mrs. Lo who, for all real intents and purposes, was not a trained social worker, who after only minimal and brief experience none of which related to child abuse, was given responsibility for her first major case, and, for the Ministry of Correctional Services, by Mrs. Maughan, a community volunteer then only recently recruited by the Ministry who too was given a case of this magnitude as her first case. She was sworn in as a volunteer probation worker in June 1976 after attending five evening training classes. Annals Popen was her first and, at that time, her only probationer.

It would seem that at this time Kim's was the only case of child abuse recorded as such in the Society and Annals Popen's probably was the only instance of probation in the County of Lambton involving child abuse. There were few, if any, recorded instances of child abuse in the County of Lambton during the whole period of Kim's life. The various witnesses whose testimony touched upon that issue did not have a common basis of definition of child abuse.

Thus Kim's fate to some large degree was entrusted, in one instance directly by the Ministry of Correctional Services and in another by an essentially public agency funded to considerable degree and supposedly supervised, inspected and advised by the Ministry of Community and Social Services, to two workers with the limited training and experience which I have mentioned.

I am not to be taken in that reference to be in any way critical of Mrs. Maughan as a volunteer or as a person. I was much impressed by Mrs. Maughan. I said so at the conclusion of her testimony. I believe her to be a concerned and involved and caring member of her community. She had talents to share with and for that community. She chose a worthwhile way in which to share those talents.

Nor am I critical of the volunteer programme or service. I think that with volunteers such as Mrs. Maughan it is a very useful and worthwhile adjunct to the Ministry.

I accept, as a correct assessment of Mrs. Maughan, Mr. Brouwer's testimony that

"She is an excellent worker. I believe she is one of our -- if not the best volunteer worker with our volunteer programme."

That appears also to have been accepted by the Ministry of Correctional Services. By the time Mrs. Maughan testified upon the Inquiry on July 6, 1978, she had been appointed co-ordinator of the volunteer programme of the Probation Service of that Ministry in the County of Lambton.

I make this reference to Mrs. Lo and Mrs. Maughan in this context because I am left to wonder as to whether anything to do with Kim in Sarnia in 1976 might have been different or have had different results if either or both Mrs. Lo and Mrs. Maughan had been more highly trained and more experienced in cases such as Kim's.

As required by Mr. Brouwer, Mrs. Maughan prepared and gave to him each month a written report as to her contacts with Kim's family during the preceding month. Her reports upon contacts during June,

July and August, 1976 were filed as exhibits, as were her reports for subsequent months. In addition to providing those reports Mrs. Maughan met frequently with Mr. Brouwer to discuss the case. In none of these reports or discussions was there any mention of any injury to Kim occurring during the period. Mrs. Maughan saw no injury of any significance to her and none such was mentioned to her.

I think the first sentence of the final paragraph of Mrs. Maughan's written report as to contacts in the month of June, 1976 is significant. It reads as follows:

"According to both Mr. and Mrs. P. the situation is so devoid of problems as to seem a little unrealistic."

It bears out my high regard for Mrs. Maughan's talents. While lacking the formal training of Dr. Curtin she was assessing the situation much as he had done. As she said in her testimony upon the Inquiry

"in view of the past history, there had to be some adjustments to be made and they had to be having some problems, but they were not admitting any."

I am aware that, from the outset of her involvement with the case, Mrs. Maughan knew of Dr. Curtin's report attached to the pre-sentence report.

This report by Mrs. Maughan was a source of information easily available to the Society early in July 1976 if they had asked for it. In fact much, if not all, of the information was given to the Society, in the person of Mrs. Lo by Mr. Brouwer on July 26, 1976. That was the sole instance of the Society's personnel initiating an approach to another agency in respect of Kim. It received an immediate favourable and helpful response.

That information does not appear to have affected any decision by the Society with reference to Kim. Neither it nor her call to Mr. Brouwer is mentioned in the recording made by Mrs. Lo in the file of the Family Services Department of the Society. Neither Mrs. Lo nor Mrs. Harvey indicated

in testimony that the conversation between Mrs. Lo and Mr. Brouwer was discussed by them at the Society.

In Mrs. Lo's recording there is a paragraph specifically relating to other events of July 26, 1976 as observed by her. They appear to be of less significance than her conversation with Mr. Brouwer. To my mind that makes all the more glaring her failure to record the conversation with Mr. Brouwer and the contents of Mrs. Maughan's report.

Similarly the latter portion of Mrs. Maughan's written report as to contacts in July, 1976 is of interest. She wrote as follows:

"July 18, 1976. The atmosphere was so charged with resentment and anxiety that I confronted the Popens immediately on the obvious change in feeling from our previous contact. After an attempt to ascribe the change to trivialities, they decided to trust me with their feelings which I feel are totally justified. Mrs. P.'s treatment by a representative from another community agency is humiliating to a proud woman who has committed no crime and is not being shown the courtesy she is entitled to. I encouraged her to protest the incident but she is reluctant to risk any trouble. This had upset Mr. Popen also and had damaged the rapport they had established with me, as well. However, the release of their feelings regarding the episode and my response to the feelings of injustice had acted as a catalyst and we were really opening up areas of opinion and true feeling that were most helpful to me when unexpected visitors arrived. Hopefully we can pick this up again. The client is fulfilling the terms of his probation with no difficulty."

Unfortunately that written report was not available to Mr. Brouwer when he spoke with Mrs. Lo on July 26, 1976. Nor is there any evidence that Mrs. Maughan had spoken to him about the incident or that any of the information was passed to the Society.

That may be of some significance because while Mrs. Lo, in her recording in the file of the Family Services Department of the Society, did not make mention of it, she did mention it in her testimony upon the Inquiry. When asked about Mr. Vandenberghe's evidence to the effect that Jennifer Popen despised Mrs. Lo and resented her visits and questions, Mrs. Lo said that she had not felt such resentment. She then went on to say that during one of the visits recorded by her for the period from July 7 to 23, 1976, Jennifer Popen had given the impression that she was not happy with the Probation Officer, Mrs. Maughan.

Thus, at about the same time, Jennifer Popen was commenting to both Mrs. Lo and Mrs. Maughan upon her relationship or experience with the other. Neither Mrs. Lo nor Mrs. Maughan mentioned it to the other. Neither mentioned it to her superior. Mrs. Maughan did record it in her report at the end of July. Mr. Brouwer did not see that report before Kim died. He was on vacation at about the time it was prepared and did not return until after Kim's death. There is no evidence to indicate that, in Mr. Brouwer's absence, any official of the Probation Services took any action with reference to that report before Kim's death. Mrs. Lo's recording does not indicate any comment by Jennifer Popen more critical of Mrs. Maughan than of Mrs. Lo.

This would appear to be another instance of lack of communication, at least, between two public officials, in two different agencies or departments of government concerned with and providing service to the same family.

This seems to me to be unfortunate. Mrs. Maughan clearly in her report gave sympathy and encouragement to Jennifer Popen in her criticism of Mrs. Lo and Mrs. Lo's conduct. Jennifer Popen's criticism of Mrs. Maughan was not recorded by Mrs. Lo in the file of the Family Services Department of the Society as a separate and distinct event. However, when Mrs. Lo testified upon the Inquiry she did not indicate that she had in any way attempted to defend Mrs. Maughan in the face of Jennifer Popen's criticism.

It seems to me that in a sense Jennifer Popen was behaving toward Mrs. Lo and Mrs. Maughan, and, in a somewhat similar way, toward Mrs. Kuly as well, in much the same way that Kim was alleged to behave towards her parents. She played one against the other. Mrs. Lo recorded that comment by Jennifer Popen with reference to Kim in her dictation for the period from June 17 to July 6, 1976.

One must wonder if persons more highly trained and experienced than Mrs. Lo and Mrs. Maughan would have recognized what was happening and thus would have contacted the other to discuss how to deal with Jennifer Popen's tactic and the significance, if any, to be attached to it.

In fairness to Mrs. Maughan it must be pointed out that her involvement with Annals Popen's probation during Kim's lifetime was for a period of only about seven weeks. Her first visit to the Popen home was on June 20, 1976. Her last visit before Kim's death was on August 8, 1976. Mrs. Maughan was in the Popen home on only four occasions during Kim's life, on June 20, 1976, July 4 and 18, 1976 and August 8, 1976, and spoke by telephone with Annals Popen on only two occasions, once prior to June 20 and once on July 6, 1976. She also spoke to Jennifer Popen by telephone once prior to June 20, 1976.

In fairness to Mr. Brouwer, his contact with Annals Popen was brief. It was initially in connection with preparation of the pre-sentence report after the finding of guilt on February 23, 1976. Later he was assigned to provide personal supervision of Annals Popen's probation from March 29, 1976 until June 18, 1976 and thereafter indirect supervision of his probation through Mrs. Maughan. Apart from contact with Annals Popen in connection with preparation of the pre-sentence report, Mr. Brouwer spoke with Annals Popen on only four occasions during Kim's life, on March 29, the date of sentencing, April 21, May 21 and June 18, 1976. That last occasion was when Mrs. Maughan was given direct responsibility for management of Annals Popen's probation under Mr. Brouwer's supervision. He did have the telephone call from Mrs. Lo on July 26, 1976 in which she expressed concern as to the state of affairs in the Popen home.

In preparing the pre-sentence report in March, 1976, Mr. Brouwer relied on the various sources set out in the pre-sentence report. It is to be noted that Mr. Carter was not such a source nor was any police officer. Mr. Brouwer accepted that Annals Popen was responsible for Kim's injuries because he had entered the plea of guilty to the charge under section 40 of The Child Welfare Act. Mr. Brouwer did this even though Annals Popen told him that in entering that plea he, Annals Popen, did not remember what had happened and relied on Jennifer Popen's statement to him that he had injured Kim. Mr. Brouwer did this even though Mrs. Lo had told him of the suspicion in the minds of the Society's personnel that Jennifer Popen was abusing Kim.

Nowhere in the pre-sentence report is there any mention of the equivocation of Annals Popen's admission. Nowhere in the pre-sentence report is there any mention of the suspicion of the Society's personnel as to Jennifer Popen's involvement with abuse of Kim.

It would seem that Mr. Brouwer, like others, including the Society's personnel, overlooked the exact nature of the charge to which Annals Popen had entered the plea of guilty. Annals Popen did not plead guilty to having assaulted Kim. He did plead guilty to the charge that having custody of Kim he unlawfully did fail to protect her, contrary to section 40(1) of The Child Welfare Act.

Mrs. Maughan's reports do not indicate that she noticed any injury to or mistreatment of Kim at any time and none of the testimony upon the Inquiry indicated that Mrs. Maughan had observed any injury to or mistreatment of Kim. She saw Kim on all but one of her visits to the Popen home.

On July 4, 1976, Annals Popen did point out to Mrs. Maughan some slight bruises on the edge of Kim's cheeks caused, he said, by Kim pinching herself. Mrs. Maughan testified that Annals Popen was concerned that even a slight injury such as that might lead to Kim's removal by the Society. She said she reassured him that he should not worry. She testified she had not noticed the bruises until he drew her attention to them.

Mr. Brouwer testified that he had no cause for concern that Kim was being abused during the period of Annals Popen's probation. He said he had specifically asked Mrs. Maughan to be observant of the treatment of Kim in her home.

Mr. Brouwer was candid in his testimony upon the Inquiry to acknowledge that, in retrospect, if he were to be involved in another case such as that involving Annals Popen, Kim and Jennifer Popen "there would be more contact" although he was not sure how much more there could have been in the relatively short period of time.

The Probation Service of the Ministry of Correctional Services quite properly arranged for Dr. J. J. Curtin to examine Annals Popen prior to the preparation of the pre-sentence report. By good fortune Dr. Curtin had previously interviewed Jennifer Popen and had forwarded a consultation note to the physician who had referred her to Dr. Curtin. Dr. Curtin's report upon Annals Popen forwarded to the Probation Service indicates that a copy of that consultation report was attached thereto.

Unfortunately, no one recognized the limitations that Dr. Curtin so clearly set forth in his report. No one endeavoured to make or authorized Dr. Curtin to make the objective inquiries or observations or psychological testing which he felt would be necessary to provide a more accurate assessment of Annals Popen and, it would seem, of Jennifer Popen. Clearly, Dr. Curtin felt that an accurate assessment could not be based on inquiries made of Annals Popen and Jennifer Popen.

Mr. Brouwer certainly did not recognize Dr. Curtin's caution as to the value of his report. Mr. Brouwer regarded consumption of alcoholic beverages as Annals Popen's major problem. He felt that Annals Popen was coping with that problem; so Mr. Brouwer accepted Dr. Curtin's statement that if Annals Popen were to stay totally away from alcohol and go to some course the danger of further abuse to Kim would be minimized.

In summary, The Probation Service did well to have Annals Popen examined by Dr. Curtin. As an unexpected bonus he gave them some comments upon

Jennifer Popen. But the Probation Service did not use Dr. Curtin's report to the maximum advantage to ensure that those responsible for Kim's care and protection, the Society, were specifically informed of Dr. Curtin's report and thus enabled to act appropriately to ensure Kim's safety in the future.

Mr. Brouwer acknowledged that the Probation Service had an indirect concern for Kim's welfare. Therefore, he should have seen to it that information he obtained which might have affected her safety was given to the Society even though they failed to ask for it.

To his credit, Mr. Brouwer did, in the final paragraph of the pre-sentence report, write:

"It is difficult to determine whether the offender's problems are due only to his drinking, or whether there are other underlying causes. If his problems are due to alcohol alone, then it would seem that his abstaining from alcohol would minimize a recurrence of this type of offence. This offender could well benefit from a period of supervision as an avenue of directing him into continued involvement with the A.A. and family counselling."

Clearly Mr. Brouwer acknowledged that he was uncertain as to the cause of the problems. He was uncertain whether alcohol was the sole cause or whether there were other causes.

Unfortunately, the Probation Service did not pursue the other inquiries or observations suggested by Dr. Curtin as possible means to obtain a more accurate assessment of Kim's parents. The Probation Service did not commission any psychological testing nor did the Society who, while obviously aware of the existence of the pre-sentence report, had not seen it and had not sought a copy of it. Mrs. Lo was in the Court on March 29, 1976 when Annals Popen was sentenced and the pre-sentence report was discussed, but, on the basis of her recording, she misunderstood or misconstrued what she heard.

The Society did not take any advantage at all of Dr. Curtin's report because no one from the Society saw fit to ask to read the pre-sentence report. There is no real reference to it in the recording in the Society files.

Mr. Carter's recording in the Society's file for the period from September 1, 1975 to February 29, 1976 does state that the judgement of the Court on February 25, 1976 placed Kim in the care of the Society for six months:

"plus the proviso that Mr. Popen obtain psychiatric help and both parents attended (sic) the Parent Education Course (sic) at Lambton College and care of weekly supervision in their home by the Children's Aid Society and all future visits of Kim to them shall be in their home under the Children's Aid Society worker's supervision."

When reviewed against the transcript of the Court proceedings on February 25, 1976 and the endorsement of the order of the Court upon its record that day, that summary by Mr. Carter in the Society's files is, at best, inadequate and inaccurate.

Nowhere in the reasons for judgement given by Judge Nighswander is there a "proviso that Mr. Popen obtain psychiatric help and both parents attended (sic) the Parent Education Course (sic)" nor is there any reference to the Society's supervision of the Popen home weekly or of Kim's visits there.

Nowhere in Mr. Carter's recording is there reference to Judge Nighswander's expressions of concern as to the time required to ensure Kim's safety in her home and as to the absence of evidence to show what Annals Popen had done about his alcohol problem.

An especially important omission is that Mr. Carter did not note Judge Nighswander's statement:

"I [Judge Nighswander] am definitely going to note that he [Annals Popen] must give evidence that he has done something and

that it is succeeding, before the Court will permit the child to return to its parents."

Notwithstanding Judge Nighswander's testimony upon the Inquiry, that statement seems to me to have been sufficient to impose upon the Society in this instance, regardless of any other procedure in any other case, an obligation of courtesy at least, if not of law, to return to the Court for permission to return Kim to her home.

Nowhere in Mr. Carter's recording is there reference to the doubts expressed by Judge Nighswander as to the failure of the evidence as to Kim's injuries to be consistent with the evidence as to the parents' explanation for those injuries. It is clear that Judge Nighswander was not satisfied that the injuries were caused in the ways suggested by the parents' evidence and explanations.

Nowhere in Mr. Carter's recording is there reference to Judge Nighswander's terse dismissal of the submission by the Society, agreeable to the parents, that two months' wardship would be sufficient. He made Kim a ward of the Society for six months.

A further recording by Mrs. Lo purports to reflect the nature of the proceedings in the Court on March 29, 1976. That recording is as follows:

"The Popen's were in court on marginal date. Mr. Popen again pleaded guilty to the charge of neglecting to protect his child. Due to the positive results of psychiatry (sic) assessment it would indicate that Mr. Popen was not in need of psychiatric treatment. Due to his involvement with A.A. and apparent intention to enroll(sic) in the Parent Effectiveness Training Course, Mr. Popen was put on probation and sentence was suspended for one year. However, if he violates his probation, he will face 6 months to 1 year in jail."

That recording is entirely misleading and inaccurate. Upon reading Dr. Curtin's report

attached to the pre-sentence report it is clear to me that there were no "positive results of psychiatr[ic] assessment [to] indicate that Mr. Popen was not in need of psychiatric treatment."

Dr. Curtin in his report of March 19, 1976 wrote as follows:

"Mr. Popen has told me the following things, which undoubtedly will minimize the danger of the child being harmed in the future, namely he has stopped drinking and has just recently started going to Alcoholics Anonymous. Mrs. Harvey is setting up some type of course across from St. Peter's Church for both he and his wife to attend. He and his wife are perfectly agreeable that the Public Health Nurse and the Children's Aid visit their home any time in the future to check their treatment of their child. Even though all these things would surely minimize the danger in the future I am really unable to give any opinion as to the likelihood of a repetition at a future date, because I cannot assess in any depth the emotional make-up of Mr. Popen. He denies ever having been abused himself as a child and in fact, my enquiries from him yield such little abnormality that I wonder about his reliability as an informant. I would think therefore, that a more accurate assessment of his emotional state will likely result from objective enquiries rather than from any enquiries I might make from himself or his wife.

In taking a family history past and personal, again I find it so bland that I have to wonder about the reliability of it.

In summary then, if Mr. Popen stays totally away from alcohol and attends whatever courses Mrs. Harvey, the Public Health Nurse (sic) might set up, and Parents' Anonymous, if a branch of this were available locally, it would surely minimize the danger of the child being battered in the future. If Judge Nighswander decided to put Mr. Popen on probation I think this too, would be therapeutic. I cannot see

where attending a psychiatrist would be of any benefit. I think to get a more accurate assessment it would need to be done by objective observation or possibly through psychological testing. I hope this assessment may be of some value."

It would seem that Mrs. Lo could find "positive results of psychiatr[ic] assessment" only in the sentence "I cannot see where attending a psychiatrist would be of any benefit." To me, in the context in which that sentence appears, that too is a negative not a positive result. It is a statement that psychiatry would not be helpful, but some other approaches might provide a more accurate assessment of Annals Popen and the situation in general. Dr. Curtin in his report said only that Annals Popen's abstaining from alcohol and his attending courses would minimize the likelihood of a recurrence of abuse of Kim.

From Mrs. Lo's recording in the Society's files, I am satisfied she heard at least portions of Dr. Curtin's report read in Court on March 29, 1976. She knew it was considered by Judge Nighswander. She made no effort to obtain a copy of the pre-sentence report and of Dr. Curtin's letters attached to and forming part of it.

In his testimony, Mr. Brouwer acknowledged that if, in March, 1976, he had made inquiries to enable preparation of a pre-sentence report relative to Jennifer Popen and had then obtained the information which he obtained in December 1977 and set forth in the pre-sentence report he prepared following her conviction upon the charge of manslaughter, he would have been concerned about Kim's safety and would have tried to prevent Kim's being returned to Jennifer Popen.

I have already mentioned my high opinion of Mrs. Maughan and her ability as a lay person to make an assessment of the situation which corresponded with the opinions expressed by an expert, Dr. Curtin. In another area Mrs. Maughan's instinct, to use her word, led her to doubt that Annals Popen had caused the injuries to Kim. She expressed that doubt to Mr. Brouwer even before she met Annals Popen. She said Mr. Brouwer then told her that in the beginning most

of the authorities, and that term must have been intended to include the Society, felt that Jennifer Popen was the one who abused Kim. She said her instinctive feeling was that no mother would permit ongoing abuse of her child by the child's father. For that reason she was doubtful that Annals Popen had inflicted the injuries to Kim.

Another area where Mrs. Maughan correctly assessed the situation was that of the Parent Effectiveness Training Course. She knew Annals Popen and Jennifer Popen had not attended all sessions of that Course to the date of her written report at the end of June, 1976, but, on the basis of her discussion with them, she felt that they were not able to understand it and absorb its full content, as for example, the application of techniques mentioned in the Course.

Jennifer Popen in her testimony upon the Inquiry spoke derogatively about the Course and its suitability to Annals Popen and her as parents of Kim. She felt it related more to problems parents might have with much older children, perhaps teenagers.

Mrs. Maughan testified that she formed the opinion that, in the marriage and in the affairs of the family, Jennifer Popen was the dominant and more intelligent partner and Annals Popen the subservient partner.

On the basis of her reading of the file in the Probation Office Mrs. Maughan said Jennifer Popen strongly asserted that Annals Popen was responsible for the deliberate injury to Kim and, while assuming responsibility for some incidents of injury to Kim, she claimed that those later injuries were incidents of accident. In retrospect, when she testified, Mrs. Maughan formed the opinion that Jennifer Popen had sought to deceive her.

Mrs. Maughan testified as to the atmosphere surrounding her visits to the Popen home. On June 20, 1976, Annals Popen, Jennifer Popen and Kim all appeared tense at the outset, but gradually, with general conversation, that eased.

In connection with her visit on June 20, Mrs. Maughan wrote in her report that she would like to contact the Society to ascertain what arrangements had been made for Kim's care during Jennifer Popen's hospitalization for delivery of the baby and to ascertain if Jennifer Popen and Annals Popen had in fact attended most of the Parent Effectiveness Training Course. She said she wanted that contact only to obtain information and not because of any anxiety about Kim's well-being. Perhaps unfortunately, she did not make that contact. It was merely an unfulfilled intention.

On July 4, 1976 the atmosphere was somewhat relaxed. Annals Popen explained to Mrs. Maughan that two minute bruises in the area of Kim's cheek were caused by Kim pinching herself.

On July 18, 1976, Mrs. Maughan was struck by a great change. Jennifer Popen was curt in receiving her and appeared hostile. Annals Popen looked very worried and was very tense and anxious. Kim was not seen by Mrs. Maughan on that occasion. Kim was said to have been in bed. Mrs. Maughan felt she had no authority to insist upon seeing her. I believe she was correct in that understanding.

This was one incident of a person visiting the Popen home in an official capacity and being denied, however politely, an opportunity to see Kim.

Mrs. Maughan inquired quite directly as to why Annals Popen and Jennifer Popen were hostile, worried and tense. She was given an explanation based on Jennifer Popen's being uncomfortable with some dental problem.

Mrs. Maughan testified that after some discussion she sought to learn some of the circumstances surrounding the injuries to Kim which had led to the charge against Annals Popen in the fall of 1975. She said Jennifer Popen denied having been present in the room when Kim was injured by Annals Popen, but then

"just closed right up, so I knew there was no point continuing that line anyway at that stage."

Mrs. Maughan said that Jennifer Popen then began to be critical of Mrs. Lo. The criticism was particularly that Mrs. Lo had visited on the previous Monday by prior arrangement, that being her first visit since the birth of Kim's brother, Karie, in July, 1976, but she had returned unexpectedly on Wednesday "just tapped on the door and opened it and walked right in." Mrs. Maughan testified that Jennifer Popen said that made her angry and that it seemed Mrs. Lo was trying to "catch [her] doing something" and to question Jennifer Popen's ability to care for two children.

Mrs. Maughan testified that she tried to deal objectively with that position taken by Jennifer Popen. She said that she told Jennifer Popen she could understand Jennifer Popen's feelings of anger if Mrs. Lo gave that impression. She testified she had told Jennifer Popen that

"that is rather rude if that's what happened."

Mrs. Maughan testified that she suggested that Jennifer Popen complain directly to the Society, but Jennifer Popen declined to do so because

"she was afraid to cause any trouble and besides she didn't want to hurt anybody's feelings."

Mrs. Maughan testified that she encouraged Jennifer Popen to protest Mrs. Lo's actions and that then Jennifer Popen enlarged her criticism of Mrs. Lo, particularly as to her alleged comments to Jennifer Popen about birth control. Mrs. Maughan testified that she told Jennifer Popen she could understand Jennifer Popen's resentment if that indeed had happened.

Mrs. Maughan testified that she felt a lot of the difficulty arose from Jennifer Popen's own personality, her pride, particularly in her intelligence and education, and her independence.

Mrs. Maughan also said she felt that perhaps Jennifer Popen had some guilty secrets she was afraid would be uncovered by Mrs. Lo. Mrs. Maughan somehow related that to the fact that, while

Annals Popen had pleaded guilty, some people originally thought Jennifer Popen was at least involved in the abuse of Kim.

I have had in another connection much the same feeling that Mrs. Maughan expressed. The feeling was that Jennifer Popen sensed that Mr. Carter was suspicious of her and thus she wanted him removed from the case lest he ascertain the true state of affairs. Her wish was fulfilled. Mrs. Harvey removed Mr. Carter.

As she was now being critical of Mrs. Lo Jennifer Popen had mounted the same sort of general attack upon Mr. Carter before the case was transferred to Mrs. Lo. Mrs. Lo in her testimony said she understood from Mrs. Harvey that Annals Popen and Jennifer Popen were very hostile to Mr. Carter.

As to her not having contacted the Society herself when Jennifer Popen made these critical comments about Mrs. Lo, Mrs. Maughan's testimony was:

"I felt if she [Jennifer Popen] had a complaint against the Children's Aid really at that time it was not my place to go to the Children's Aid."

She testified that she told Jennifer Popen that if she had such strong feelings she should talk to someone at the Society.

Mrs. Maughan testified that as she then sought, by discussion, to explore the circumstances of Kim's injury, Jennifer Popen almost insisted that there be no such discussion.

She testified that Jennifer Popen expressed criticism of Annals Popen's attendance at Alcoholics Anonymous and suggested that he derived no benefit from the meetings. She testified that Jennifer Popen went on to claim that the Parent Effectiveness Training Course was of some benefit. Mrs. Maughan said she was surprised by that because she had the impression from her original visit that they had not absorbed too much of the Course.

In her testimony Jennifer Popen made a negative assessment of the value of the Parent

Effectiveness Training Course to her and Annals Popen.

Mrs. Maughan testified that she had not consulted with anyone at the Society. She said she was new to the situation and was trying to get some insight into it before trying to develop any relationship between her services and those of the Society.

She testified that she had arranged to see Annals Popen on Sunday, August 1, 1976. At that time she was visiting him at intervals of two weeks. She was unable to keep the appointment and telephoned. She said she spoke to Jennifer Popen who said Annals Popen was sleeping. That response bothered Mrs. Maughan somewhat because it was supper time and because of Annals Popen's apparent anxiety on July 18, which she felt was not all the result of Mrs. Lo's visit. She feared he may have been drinking.

Thus on August 1, 1976 Mrs. Maughan had some concern as to the state of conditions in the Popen home and as to the relationship between Kim's parents.

The visit of August 1 was postponed to Sunday, August 8, 1976. On that date both Annals Popen and Jennifer Popen appeared to be delighted to see Mrs. Maughan.

Mrs. Maughan testified that both stated they felt relaxed during her visits, unlike how they felt during Mrs. Lo's visits. She said both also stated that during her visits Kim's behaviour was different from what it was during Mrs. Lo's visits. Mrs. Maughan testified that Jennifer Popen continued to complain about Mrs. Lo.

She said that usually during her visits Kim sat on the chesterfield. On the first visit on June 20, 1976, at Mrs. Maughan's suggestion, Kim did come to her and sat on her knee for most of the visit. On another occasion, July 4, 1976, Kim got down from the chesterfield to go to the washroom. Those were the only two occasions on which Mrs. Maughan saw Kim other than on the chesterfield or in the bedroom.

Mrs. Maughan testified that that did not appear to be unusual because Kim was very withdrawn. Mrs. Maughan said she tried to assess Kim's condition and had some concern that she may have suffered some residual damage from the earlier abuse.

Mrs. Maughan said that Kim was usually relaxed and friendly with her during her visits. However she testified that on August 8, 1976:

"[Kim] was once more kind of huddled back on the chesterfield and very withdrawn, not responding when I spoke to her. She would just look at me...
[she was] very withdrawn and a little peevish when her mother or dad spoke to her; she was a little irritable."

Mrs. Maughan testified that this led her to comment that Kim seemed tired. Jennifer Popen responded to that by saying Kim had a sore lip. Mrs. Maughan said the mark was not "that obvious" and she had not noticed it, but Jennifer Popen pointed it out.

Mrs. Maughan described the mark as being

"more like a little swelling and a little discoloured"

on the bottom lip. Jennifer Popen told Mrs. Maughan it was a coldsore which Kim kept picking, but she had she had had Kim to the doctor two or three days earlier and obtained some ointment. Mrs. Maughan testified that Jennifer Popen said the ointment caused Kim to cry and the doctor said to leave it alone to heal on its own.

Mrs. Maughan was shown Exhibit 14D, a photograph of Kim's body after her death. She said the mark appearing on the lip in that photograph was not what she had seen on August 8, 1976. She testified that on August 8, 1976:

"there was no blood or anything visible...
it wasn't open anyway at that stage."

In cross-examination she agreed that the condition of Kim's lip as shown in that photograph was much worse

than she saw on August 8 and then added it was "fresher."

Mrs. Maughan testified that this mark was the only mark she had seen on Kim. She said she had seen no bruising on the side of Kim's neck or elsewhere on her body. Mrs. Maughan described Kim's usual clothing as being shorts, sleeveless low-cut T-shirt, ankle socks and shoes, all of which would have permitted Mrs. Maughan to see bruises or marks, had there been any, on most of Kim's body.

When asked about Kim's appearance on August 8, 1976 as compared with the photograph of her dead body taken on August 11, 1976, Mrs. Maughan said she had had a good opportunity to see Kim's neck, head and face and the parts of her body not covered by that very light clothing she usually wore. Mrs. Maughan testified that, being aware that the probation order she was supervising arose as a result of abuse of Kim and that abuse could recur, she looked at Kim as closely as she could without specifically going to Kim and examining her. Mrs. Maughan said that all she saw was the mark on Kim's lip which Jennifer Popen called a cold sore. She said the photograph of Kim's face indicated a "fresher" break in the lip than the one she saw on August 8, 1976 and also showed a bruise and cut on Kim's jaw which she had not seen on August 8, 1976.

I am satisfied on Mrs. Maughan's evidence, which is corroborative of expert medical testimony as to the time at which various injuries to Kim may have occurred, that if that break in the lip and bruise and cut on the jaw shown in the photograph had been present on August 8, 1976, Mrs. Maughan would have seen them and would have remembered them. I am satisfied they were not there.

I am similarly satisfied that the contusions on Kim's scalp at the hairline mentioned in Dr. Patodia's post-mortem examination report were not visible on August 8, 1976. Mrs. Maughan reinforced the basis for that conclusion by testifying that when she saw Kim's body at the funeral home she immediately noticed the head bruises.

I reach the same conclusion with reference to the injury to Kim's left ear and the contusion on her left cheek.

As to the injuries to Kim's hands, arms and elbows mentioned in the report on the post-mortem examination, while Mrs. Maughan acknowledged she had not looked carefully at Kim's hands and that she may not have seen the backs of Kim's arms and elbows, she did say she had noticed Kim moving about on the chesterfield without in any way favouring her arms and elbows. Thus I am satisfied that the injuries to Kim's hands, arms and elbows noted after her death were not present, visibly, on August 8, 1976.

Mrs. Maughan testified that on August 8, 1976 Jennifer Popen, for the first time, made reference to the doctor having discovered some condition in Kim's blood. The reference was to Dr. Gannon who was serving Dr. Jumeau's patients during Dr. Jumeau's absence. Mrs. Maughan quoted Jennifer Popen as having said:

"...I don't know whether it's sugar diabetes or what...Maybe this is why she bruises too."

Jennifer Popen told Mrs. Maughan that although she had already told Mrs. Harvey of this, Mrs. Lo nonetheless persisted in commenting or remarking upon bruises on Kim.

Mrs. Maughan testified that Jennifer Popen has further complaints about Mrs. Lo. The complaints related to Mrs. Lo's queries with respect to Kim's care and her comments thereon and her intrusion upon the privacy of the family.

Mrs. Maughan said that she then, on August 8, decided she should talk with Mrs. Lo. She said she informed Annals Popen and Jennifer Popen of her intention to speak to Mrs. Lo and obtained their consent. Mrs. Maughan stated that she need not have obtained such consent,

"but this is more or less the procedure we use."

Mrs. Maughan continued her testimony to say that she decided to speak to Mrs. Lo and to try to establish if Jennifer Popen's complaints were valid or if there were a clash of personalities. She also wanted to learn Mrs. Lo's assessment of the situation.

Mrs. Maughan's reference to the possibility of a clash of personalities is interesting when one considers Mrs. Harvey's testimony relevant to the reasons for the transfer of the file from Mr. Carter to Mrs. Lo. Inherent in that testimony was a suggestion that a problem existed because of Mr. Carter and that Mrs. Lo would be one to whom Jennifer Popen could more easily relate. There were other areas of evidence indicating some difficulties in the relationship between Jennifer Popen and Mr. Carter. As I view all of that evidence, I am satisfied that whatever difficulties there were they were not of Mr. Carter's making and probably they were contrived by Jennifer Popen.

Mrs. Maughan testified that she never saw Jennifer Popen exhibit "voluntary affection" towards Kim. She testified that if Kim were close to Jennifer Popen, she did not push Kim away, but did not put an arm around Kim or hug her. She said she did not see Jennifer Popen be mean to Kim.

On Thursday, August 12, 1976 at about 8:45 p.m., Annals Popen telephoned Mrs. Maughan to advise her of Kim's death on August 11, 1976. She testified that he told her Kim had been riding a little toy horse on the porch, that Jennifer Popen had gone into the house for something and that when Jennifer Popen returned to the porch Kim was lying on the ground. Annals Popen told Mrs. Maughan that Jennifer Popen took Kim to the hospital. Mrs. Maughan said Annals Popen was very sad.

As a result of that telephone conversation, and with the agreement of Annals Popen and of Jennifer Popen relayed through Annals Popen, Mrs. Maughan visited the Popen home that same evening.

Mrs. Maughan testified that Jennifer Popen spoke with her during her entire visit that evening. Mrs. Maughan said Jennifer Popen related the events

of that day much as Annals Popen had during his telephone call, but in greater detail.

Mrs. Maughan continued her testimony to say that she spoke with Jennifer Popen three times after Kim's death and Jennifer Popen told her a different story each time.

The first story was that told on August 12, 1976.

In the second story, told to Mrs. Maughan on August 13, 1976 Jennifer Popen sought to blame Kim's death on another person.

In the third story, told to Mrs. Maughan at Kim's funeral, Jennifer Popen continued to blame the other unnamed person, but by then, according to Mrs. Maughan:

"[Jennifer Popen's] stories just weren't making any sense at all. They weren't even jibing..."

So Jennifer Popen had no credibility in Mrs. Maughan's view. Mrs. Maughan testified that:

"...even without the two previous contacts, the story that [Jennifer Popen] told me the third time, it didn't even jibe -- the details that she was telling me then."

Mrs. Maughan testified that on August 12, 1976, Jennifer Popen had told her that Monday, August 9, 1976 had been a very good day for Kim, "the happiest day of her life", but on Tuesday, August 10, 1976 Kim awoke, did not feel well, was cranky, would not eat her breakfast, bumped into doors and furniture and "all she wanted to do was sleep."

Mrs. Maughan said Jennifer Popen continued that story to say that Kim was awake through the night, Tuesday, but settled down again with no problems. Jennifer Popen, as related by Mrs. Maughan, said that on Wednesday morning, August 11, 1976, Kim was worse, still refused to eat or drink and "when [Kim] went to get down from her high chair she fell." Jennifer Popen went on to say that she had called Mrs. Vandenberghe who said she thought Kim

was ill and should have a doctor. As the story continued it was that Jennifer Popen and Mrs. Vandenberghe took Kim's temperature and found it to be elevated so that Jennifer Popen called Dr. Gannon who refused to see her then and asked her to call back in the afternoon when another doctor might see her. Jennifer Popen's story to Mrs. Maughan continued that in the afternoon the second doctor declined to see her.

Mrs. Maughan testified that she then asked Jennifer Popen why she had not taken Kim to the emergency department of the hospital. She testified that Jennifer Popen's reply was that she had thought of doing that, but was afraid to because Mr. Carter had told her that if they ever brought Kim back with anything wrong the Society would take her away again and thus, Jennifer Popen said, she was so upset she could not think.

It is appropriate and convenient for me to make here some reference to the brief testimony of Mrs. Vandenberghe.

In essence, as I understand Mrs. Vandenberghe's testimony, she, as a friend and neighbour, visited with Jennifer Popen from time to time during Kim's life and particularly during the period covered by this Chapter of the Report. At no time during Kim's life did Mrs. Vandenberghe see anything occurring, nor the results of any occurrence, which alarmed her sufficiently to express to anyone, including Mrs. Lo whom she had met in the Popen home, any concern for Kim's safety or about the care she received from her parents.

Mrs. Vandenberghe met Mrs. Lo during the period of Kim's visits home prior to May 27, 1976.

During one of those visits, Mrs. Vandenberghe expressed to Mrs. Lo some concern that Mrs. Lo had instilled in Jennifer Popen so much fear that Kim would not be returned home if she suffered any injury, however slight, during any visit to her family home that Jennifer Popen insisted Kim remain on the chesterfield and not play about the house as one might expect a child to do normally during her visits to her home.

Thus, Jennifer Popen, talking to two different people, Mrs. Vandenberghe and Mrs. Maughan, on two different occasions, blamed two different people, Mr. Carter and Mrs. Lo, for the alleged concern or fear that Kim would be removed from the Popen home in the event she were injured.

Mrs. Vandenberghe testified that, during one or more of Kim's visits home, Mrs. Lo did inquire of her as to how Kim and her parents "were making out" during the visits. She said she answered that all was "fine," which was a truthful answer based on her observations of how Kim had been treated during the visits.

Mrs. Vandenberghe testified that she just happened to be in the Popen home when the question to that effect was put. She said Mrs. Lo never sought her out away from Jennifer Popen to inquire as to Kim's health or care.

Mrs. Vandenberghe testified that at no time after Kim's return home in May 1976 did Mrs. Lo inquire of her as to Kim's health or care.

Similarly, Mrs. Vandenberghe testified that she had not sought out Mrs. Lo to mention anything to her, including two particular incidents she mentioned in her testimony.

Mrs. Vandenberghe's testimony was that those two incidents in Kim's life, at the times they occurred, were somewhat unsettling to her, but yet did not particularly alarm her as to Kim's safety. I am sure that these were the two incidents which, viewed by her in retrospect as she testified, gave to her the feeling of guilt which she said she had.

From Mrs. Vandenberghe's testimony I gather that the two incidents apparently occurred during a period about three or four weeks before Kim's death. That would indicate that they both occurred during July 1976.

In one of those incidents, Mrs. Vandenberghe was visiting Jennifer Popen in the Popen home when she heard Kim, who was in the bedroom, screaming and she heard the sound of Jennifer Popen slapping Kim. Mrs. Vandenberghe went to the bedroom

to inquire as to the reason for the screams and slaps. She said Jennifer Popen told her that Kim had wet the bed and was "going to stay like that," that is, wet in a wet bed. Mrs. Vandenberghe said she suggested Jennifer Popen should change Kim and the bed, but Jennifer Popen was adamant and left Kim crying and shaking in a corner of the bed. Mrs. Vandenberghe did not notice any injury to Kim at that time.

In the other incident, Mrs. Vandenberghe was visiting Jennifer Popen in the Popen home when Kim was sick and vomited upon the floor. Mrs. Vandenberghe testified that Jennifer Popen slapped Kim for having done that. Mrs. Vandenberghe said there were four or five or six "hard enough" slaps inflicted by Jennifer Popen upon Kim from her waist to her shoulder.

Mrs. Vandenberghe testified that she had not seen much of Kim prior to August 31, 1975 and had seen no injury to her to that time.

As to her observation of any injury to Kim at any time Mrs. Vandenberghe testified that she had seen a cut on Kim's lower lip which was like a cold sore and did not heal because Kim picked at it. I presume that was the same condition noticed by Mrs. Maughan.

Mrs. Vandenberghe also testified she had observed a bruise around the whole of Kim's neck which bruise, according to Jennifer Popen, was caused by a too tight dress. Mrs. Vandenberghe had also seen an injury to Kim's finger, a similar injury, like a cut that had not healed or a scrape, to Kim's toe and a bruise to Kim's cheek.

Mrs. Vandenberghe testified that Jennifer Popen gave various stories for the injuries and, if confronted with the fact that she had told someone else something different, acknowledged that one or other of the stories was false. Mrs. Vandenberghe testified that she did not know what to believe.

Mrs. Vandenberghe did not clearly identify the approximate time at which she observed these injuries, but said they were similar to injuries on

Kim's body shown in some of the photographs taken after her death.

As to the events of August 11, 1976, Mrs. Vandenberghe's testimony is widely different from what Jennifer Popen told Mrs. Maughan on August 13, 1976.

Mrs. Vandenberghe's testimony was that she was in the Popen home during the morning of August 11. She saw Kim walk into a door, turn around and fall over her feet. She commented to Jennifer Popen that Kim did not look well and offered to drive Jennifer Popen with Kim to a doctor. Kim appeared to be in a daze and drowsy and "wasn't walking right." Jennifer Popen responded by saying merely that Kim was tired, that there was "nothing the matter with her" and that she, Jennifer Popen, would put her to bed.

Mrs. Vandenberghe testified that on August 11, 1976, apart perhaps from the mark which may still have been on Kim's lip, she did not see any bruise or mark on Kim which was unusual or which caused her any alarm.

I return now to Jennifer Popen's story to Mrs. Maughan as to the events of August 11, 1976. It continued to the effect that she took Kim to the back porch where she rode her little horse, that Jennifer Popen went into the house to get a washcloth, that when she returned to the porch she did not see Kim at first and then saw her on the ground bleeding heavily from her mouth. The story was that Annals Popen was not then at home, having gone to the store. Annals Popen confirmed only that last aspect of Jennifer Popen's story.

In her story to Mrs. Maughan, Jennifer Popen said she picked up Kim and asked a neighbour to drive her to hospital. Jennifer Popen told Mrs. Maughan that the neighbour said Kim was dying, placed her on the floor and applied heart massage and mouth-to-mouth resuscitation. The story continued that enroute to hospital the neighbour's wife continued the efforts of resuscitation, but Kim died in the hospital.

Mrs. Maughan said Jennifer Popen related all of these alleged events prior to Kim's death with a great lack of emotion.

Mrs. Maughan testified that on August 13, 1976, Jennifer Popen telephoned to ask her to come to the Popen home. Mrs. Maughan said that Jennifer Popen told her "they," the Society, took the baby, Karie, although earlier that day, in the morning, Mrs. Lo, even after talking to Mrs. Harvey at Jennifer Popen's request, had assured Jennifer Popen that they would not remove Karie.

Mrs. Maughan testified that Jennifer Popen continued on August 13, 1976 to tell her that in the afternoon Mrs. Harvey came with two police officers and removed Karie. Mrs. Maughan testified that Jennifer Popen told her that she had asked Mrs. Harvey where they were taking him and asked her to leave him at least until Kim's funeral, but Mrs. Harvey had replied:

"How can you ask that when Kim died from kidney failure?"

On August 13, 1976, Jennifer Popen told Mrs. Maughan of the injuries Kim had suffered. Mrs. Maughan testified that she

"didn't believe that any mother wouldn't know that those injuries were there."

Mrs. Maughan understood from Jennifer Popen that in addition to other areas of abuse Kim had been raped.

Mrs. Maughan expressed the opinion that Jennifer Popen was an expert liar. She testified that she did not always believe Jennifer Popen, but at the same time she had no proof that Jennifer Popen was lying. For example, she said, she was uncertain as to the truth of what Jennifer Popen had told her about Mrs. Lo.

Mrs. Maughan testified that on August 12 or 13, 1976, while discussing the events of 1975, Annals Popen still spoke of being drunk, but Jennifer Popen said

"it wasn't him [Annals Popen]."

Mrs. Maughan said that when she pursued with Jennifer Popen the matter of the injuries which Kim suffered just prior to her death, including rape which Jennifer Popen had mentioned, Jennifer Popen claimed not to know who had caused them. Mrs. Maughan testified that Jennifer Popen spoke of her suspicions of one of Annals Popen's male relatives who, she said, had been alone with Kim prior to her death and who also had been with her at the time of every other injury.

Mrs. Maughan testified that at that time she asked Annals Popen why he had pleaded guilty. She said he replied that he had done so on the advice of his lawyer, Mr. Higgins, that, unless he did so, Kim would not be returned.

I want now to deal briefly with the involvement of The Lambton Health Unit in Kim's life.

The Lambton Health Unit had a fleeting and sporadic contact with the Popen family. That contact began in July 1974 when The Lambton Health Unit received from a hospital an official report of an illness from which Jennifer Popen was suffering. Mrs. Kuly, The Lambton Health Unit nurse who visited Jennifer Popen in that connection, found her to be in the early months of her pregnancy with Kim.

The entire incident was uneventful. Mrs. Kuly counselled Jennifer Popen generally as to nutrition and pre-natal care. Jennifer Popen indicated a desire to attend pre-natal classes in September and was encouraged to do so. She did not attend those classes. Perhaps this too was another instance of Jennifer Popen telling someone what she thought the other wanted to hear.

A nurse from The Lambton Health Unit visited Jennifer Popen in hospital after Kim's birth. The nurse felt that because of Jennifer Popen's youth a visit by a nurse from The Lambton Health Unit to the home would be helpful. Thus Mrs. Kuly visited the home in February, 1975 and spoke generally with Jennifer Popen about child care. Mrs. Kuly encouraged Jennifer Popen to call her if she needed any help.

The Lambton Health Unit had contact with or about the Popen family in June and September of 1975.

A nurse from The Lambton Health Unit visited Jennifer Popen in hospital in connection with the birth of her son in July, 1976. As a matter of routine visiting following that birth, Mrs. Kuly visited the home on August 10, 1976.

On August 10, 1976, Mrs. Kuly inquired about Kim. Jennifer Popen told her that Kim was sleeping, having her afternoon nap. This was an instance of Kim being said to be unavailable, asleep or away, when someone in an official capacity visited and inquired about her. There were other such instances.

Mrs. Kuly chose not to press her inquiry or to ask to see Kim. Mrs. Kuly testified that she made that decision because she regarded the situation as "sensitive" in that Jennifer Popen had described to her how closely the Society was supervising her. Mrs. Kuly, wishing to maintain a good relationship which she felt would enable The Lambton Health Unit to perform its role, felt that any further inquiry about Kim might, in the circumstances, be regarded by Jennifer Popen as being threatening and that the relationship of The Lambton Health Unit with the family might thus be damaged.

Mrs. Kuly testified that she was aware that the Society was supervising the family. She trusted the Society was ensuring Kim's safety.

The Society had not advised The Lambton Health Unit of Kim's return nor had the Society requested any assistance from The Lambton Health Unit. Mrs. Kuly neither saw nor heard anything to give her cause for concern for Kim or the new-born infant.

In retrospect, Mrs. Kuly's assessment of Jennifer Popen was that while she might have appeared to speak quite openly she was reticent and reserved and spoke only of things she wanted Mrs. Kuly to know, as for example, to say that the Society was closely observing the family.

On August 10, 1976 Jennifer Popen told Mrs. Kuly that Kim was doing well and was well physically. In her evidence before the Inquiry on September 17, 1978, Jennifer Popen said Kim was not well for a week prior to her death on August 11, 1976.

There was no communication between The Lambton Health Unit and the Society during the period covered in this Chapter of the Report.

Perhaps in explanation of the infrequency of visits by personnel of The Lambton Health Unit to the Popen home, Dr. Duncan, Director of The Lambton Health Unit, testified that there was an informal understanding between the Society and The Lambton Health Unit that when a child was in the care and custody of the Society the personnel of The Lambton Health Unit would not visit the home.

The rationale of that understanding was that too many social workers visiting one home was not a good thing.

It would seem that that rationale is sound. In the case of the Popen home during this period of time, in addition to the infrequent visits by personnel of The Lambton Health Unit, the Society, as represented particularly by Mrs. Lo, and by Mrs. Kirby until May 27, 1976, and the Ministry of Correctional Services, Probation Services, as represented particularly by Mrs. Maughan and Mr. Brouwer, were involved with the family.

Jennifer Popen was able to evoke some sympathy from Mrs. Maughan on the basis of what Jennifer Popen told Mrs. Maughan about the way Mrs. Lo was performing her duties. At the same time Jennifer Popen was expressing to Mrs. Lo criticism of Mrs. Maughan. On August 10, 1976, Jennifer Popen also complained to Mrs. Kuly about or at least commented upon Mrs. Lo's conduct.

Jennifer Popen was not slow in voicing to anyone who visited in any official sort of capacity, or even to any visitor such as Mrs. Vandenberghe, negative criticism of the actions or words of someone else who visited the home in any official sort of capacity.

In the earlier months of the period covered by this Chapter, that is from February 25 to May 27, 1976, both Mrs. Kirby and Mrs. Lo of the Society had ongoing contact with the Popen family.

For most of those months Kim was visiting with her parents. The visits were supervised by Mrs. Kirby on behalf of the Society.

Kim's visits with her parents had begun as early as September 11, 1975 at the Society's offices.

The records prepared by Mrs. Kirby disclose that Kim's visits with her parents in March, 1976 went rather well. However, Kim's actions during one visit attended by Mr. Popen's brother and her actions, as reported by Mrs. Cecile, with reference to a teenage boy were noted by Mrs. Kirby as possibly indicating Kim's fear of males with long hair.

While that possible fear was mentioned in testimony during the Inquiry, it seemed to me, on the evidence, that there was no relationship between Kim's actions, which were felt to be a demonstration of such possible fear, and the injuries which she had suffered in the past.

Mrs. Cecile felt that Kim's behaviour and development regressed following some of the visits, but Mrs. Kirby did not feel that the problems mentioned by Mrs. Cecile raised any concern or alarm as to the relationship between Kim and her parents. Mrs. Harvey shared Mrs. Kirby's opinion.

Kim's first visit with her parents in their home was on April 9, 1976 according to Mrs. Kirby's recording and testimony. Mrs. Lo's recording and testimony was that Kim's first home visit was on April 15, 1976.

This is another instance of fallibility in the records of the Society.

Because of hesitation and confusion in Mrs. Lo's testimony in this area and the consistency of Mrs. Kirby's testimony and recordings with reference thereto, I prefer and accept Mrs. Kirby's testimony upon this point.

Mrs. Kirby's testimony was that visits in the parents' home were begun because

"there were obviously plans being made that the child was going to be returned"

to her parents.

She said that she first became aware of those plans on February 19, 1976, the day on which she, Mr. Carter and Police Constables Wyville and Charlton confronted Mrs. Harvey and opposed any such plan.

Mrs. Kirby said that about the end of March 1976, Mrs. Lo advised her that "they," I presume she meant the Family Services Department of the Society, were going to try to place Kim back in her home by the end of May.

Mrs. Kirby testified that she then inquired of Mrs. Lo as to Mrs. Lo's dealings with the parents and the results thereof insofar as they affected the difficulties in the home which had led to the involvement of the Society in August, 1975. She said Mrs. Lo informed her that she had had several meetings with the parents who were recognizing a lot of problems and trying to change their way of living so as to have Kim returned. This included the intention of the parents to enrol in the Parent Effectiveness Training Course.

Thus, as late as the end of March, 1976, Mrs. Lo was speaking in the present tense about a lot of problems in the Popen home. She knew a lot of problems were in existence in the home at that time.

Because of that intention of the Society to return Kim to her home, Mrs. Kirby, with Mrs. Harvey and Mrs. Lo, decided it would be wise to place Kim in her parents' home for very short periods to get her used to that setting again. I had the impression that Mrs. Kirby's opinion as to the wisdom, or lack of wisdom, of that decision remained unchanged from February 19, 1976 and she joined in it merely because, in the organization of the Society, the Family Services Department "always made those decisions," that is decisions as to whether or not a child should be returned to the parents.

Mrs. Kirby also recollected that Jennifer Popen's pregnancy, expected to result in birth in July, was a prominent factor in the consideration of Kim's return to her parents' home.

Unfortunately neither Mrs. Kirby nor Mrs. Lo have made any recording in the Society's files with reference to that discussion between them about the end of March.

With reference to the question of Kim's visits in her home it is interesting to me to note Mrs. Lo's testimony with reference to and her recording of her visit with Annals Popen and Jennifer Popen on March 18, 1976. During that visit Jennifer Popen stated that Kim's visits to the family home would begin one month after the conclusion of the wardship proceedings. Thus Jennifer Popen anticipated those visits would begin on or about March 25, 1976. The recording does not disclose the basis for Jennifer Popen's comment. Mrs. Lo, when asked about it during the Inquiry, had no explanation. On the evidence presented upon the Inquiry, I am unable to determine the source of or basis for that comment by Jennifer Popen.

As it turns out Jennifer Popen's information or belief, from whatever source, was amazingly accurate. The first home visit was on April 9, 1976, just two weeks after March 25. The visits theretofore had been bi-weekly.

Jennifer Popen apparently had the information or belief before either Mrs. Lo or Mrs. Kirby the two workers in the Society directly involved with Kim and her parents at that time. It seems Mrs. Lo was not aware of it on March 18, 1976 and Mrs. Kirby felt she had participated in the decision with Mrs. Harvey and Mrs. Lo about the end of March, 1976. If Jennifer Popen's source was someone within the Society one would have to be concerned as to why the Society's field workers, Mrs. Kirby and Mrs. Lo, were not informed and were led to believe, as was Mrs. Kirby, that she participated in the decision.

Mrs. Kirby's opinion was that Kim's visit to her home on April 9, 1976 went well for both parents and for Kim.

Kim then visited her home on April 15, 22 and 29, 1976. No element of concern was noted during any of these visits, but Mrs. Kirby testified that during that period Kim was beginning to show gradually more regressive behaviour when returned to her foster home with Mr. and Mrs. Cecile. Mrs. Kirby attributed that to Kim's confusion because

"she had kind of two sets of parents."

Mrs. Kirby's recordings in the Society's files indicated that on April 26, 1976 there was a conference of Mrs. Harvey, Mrs. Lo, Mrs. Archer and herself. In her testimony she said the recorded date was in error and that the conference was held on May 7, 1976.

In her testimony, Mrs. Kirby had no explanation for that error. She explained that her practice was to dictate her recording from her handwritten notes which she then destroyed, but she would not necessarily dictate immediately after the event she was purporting to record. Presumably Mrs. Kirby had not compared the transcription of her recording against the handwritten notes upon which she relied.

This was another, albeit minor, instance in which the fallibility of the Society's recordings was demonstrated.

To compound that fallibility, Mrs. Lo's recording in the Family Services Department's file in which she refers to that meeting is under date of May 6, 1976 and then under date of May 7, 1976, she notes a further meeting with Mrs. Kirby alone. Mrs. Lo testified that at the meeting of May 6, 1976 it was left to her and Mrs. Kirby to select the exact date of Kim's return to her home; so Mrs. Kirby and she met on May 7, 1976 and decided that Kim's return would be effected on May 27, 1976.

In any event the decision reached at the meeting was that, in Kim's best interests, the visits to her parents' home should be stopped, and, as recorded in the Children's Services Department's file:

"it was decided to place her back in her parents' home at the end of May if the

parents progressed in their counselling as they had done in the past 6 weeks."

In her testimony, Mrs. Kirby enlarged upon that recording when she testified:

"...it was decided at that time that we should put the child back into the home before the new one came along and we chose May 27th as the date to put her back in..."

Thus again the recording was deficient in detail.

From Mrs. Kirby's testimony, I gather that the reference in her recording to the parents' progress in counselling arose from concerns expressed by Mrs. Lo on May 7, 1976 that:

"the parents were not quite ready to have her back yet because they had just started under a Parent Effective(sic) Training course and that they needed maybe a little more time so that she was going to tell the natural parents that the child would be placed towards the end of the month that's if she felt that they were ready for her."

Mrs. Kirby further enlarged upon or clarified the recording when she testified that the basic decision to return Kim to her home had been taken prior to May 7, 1976. Nowhere in any record in the Society, either in the Family Services Department or in the Children's Services Department, is there any mention of that basic decision having been made.

It is of interest to compare Mrs. Kirby's recording in the Children's Services Department's file with that of Mrs. Lo in the Family Services Department's file. Under date of May 7, 1976, Mrs. Lo recorded:

"Mrs. Kirby and I have decided to place Kim back home on May 27th. In the meantime no home visits will be made by Kim before this date."

If one had only the recordings of the Society upon which to rely as to when that basic

decision was made, one would, from Mrs. Kirby's recordings, conclude that it had been made at a conference on April 26, 1976 attended by Mrs. Harvey, Mrs. Archer, Mrs. Lo and Mrs. Kirby and that the basic decision was the result of what was discussed at that conference.

Mrs. Lo's recording would indicate that the basic decision was made by Mrs. Kirby and Mrs. Lo on May 7, 1976 and that at the same time they decided to terminate Kim's visits to her home.

However, from the testimony upon the Inquiry, neither recording is accurate. The conference of the four workers was held, but it was on May 6 or May 7, 1976 and not on April 26, 1976.

The basic decision was made, but it was not made at that conference; nor was it made by Mrs. Kirby and Mrs. Lo alone. It was made by Mrs. Harvey months earlier, perhaps as early as September 1975, perhaps as a "working hypothesis" to use Mrs. Harvey's words. It was made by her alone without specific consultation with anyone else in the Society or elsewhere.

That decision was emphatically restated by Mrs. Harvey on February 19, 1976 when she was confronted with the concerned opposition of Mrs. Kirby, Mr. Carter, Police Constable Wyville and Police Constable Charlton to any such decision at that time.

By the time of the conference on May 6 or 7, 1976 all that remained to be decided was when and how that basic decision to return Kim to her parents would be implemented. By then Mrs. Harvey's "working hypothesis" had become the working policy of the Society with reference to Kim.

All of the testimony I heard as to the basis of any decision within the Society relative to Kim, including the basic decision to return her to her parents, was to the effect that there was little if any discussion or consideration of the question of the identity of the person or persons who had inflicted injury to and abuse upon Kim.

Mrs. Harvey testified as to her suspicion that Jennifer Popen was that person. Others in the Society seemed to assume that Annals Popen, by his plea of guilty to the charge under section 40 of The Child Welfare Act, acknowledged that he was that person. Even Mrs. Harvey seemed to feel that that plea by Annals Popen somehow inhibited the Society although she professed to Mrs. Lo that the Society should nonetheless concentrate on Jennifer Popen.

Perhaps Mrs. Lo best expressed the position of the Society when she said she did not feel that her role included investigation to determine the identity of Kim's assailant, but that her role was to help both the parent and the child.

Thus in May, 1976, Mrs. Kirby's direct involvement with Kim was concluded when Mrs. Kirby arranged for Kim to be examined by Dr. Singh on May 26, 1976 and then to be placed in her parents' home on May 27, 1976.

Until May 27, 1976, Mrs. Lo had no direct responsibility for the supervision of Kim or of her visits with her parents either at the Society's offices or their home. However, Mrs. Lo did participate to some extent to assist Mrs. Kirby in connection with some of those visits.

Primarily, until May 27, 1976, Mrs. Lo was involved in visits with Annals Popen and Jennifer Popen. There were frequent visits. They began on February 27, 1976 when Mrs. Lo met only Jennifer Popen in her home. Obviously Mrs. Lo was favourably impressed by what she saw and what Jennifer Popen told her at that time, although she did record her inability to understand some of what Jennifer Popen told her.

On March 4, 1976, Mrs. Lo visited Jennifer Popen again in her home. She testified that when she raised the question as to whether Annals Popen or Jennifer Popen had abused Kim, Jennifer Popen

"did say that no matter how frustrated that she got she could not strike out at her child."

In retrospect that statement by Jennifer Popen was false and was made only to serve her own interests and purposes. It was a signal of possible danger to Kim.

Mrs. Lo testified that she had heard varying stories which it seems could have come to her only from the Society's personnel. One such story was that Annals Popen abused Kim while he was drunk. Another story expressed suspicion that Jennifer Popen abused Kim. Mrs. Lo did not know who abused Kim.

In her testimony, Mrs. Lo said she felt that Jennifer Popen's response which I have just noted was evasive and designed to indicate that Jennifer Popen did not wish to discuss the question of the abuse to Kim. While her recording in the Society's file notes that response to her by Jennifer Popen, it does not contain any comment upon it nor any indication of Mrs. Lo's feeling about it.

It would seem to me that if Mrs. Lo had that feeling that Jennifer Popen was evasive and unwilling to discuss abuse to Kim, Mrs. Lo should have been aware that such evasion and unwillingness might have indicated Jennifer Popen's own involvement in such abuse.

In her recording under date of March 4, 1976, Mrs. Lo wrote:

"Once Kim comes home to stay the situation will be different. It then will require close observation of the child and intensive moral support for the parents."

I am satisfied that that reflects Mrs. Harvey's comments to Mrs. Lo and reinforces my earlier expressed conclusion that very early in the active involvement of the Society in Kim's affairs, Mrs. Harvey had formulated and expressed her intention that Kim would be returned to her parents.

It also reflects the knowledge of the Society that Kim's return home, by itself, would put added strain on the situation in the Popen home and require special effort by the Society's personnel to ensure Kim's safety.

Mrs. Lo next visited the Popen home on March 18. Both Annals Popen and Jennifer Popen were there. This was the first time Mrs. Lo spoke with Annals Popen. She testified that she had met him on some earlier occasion during one of his visits with Kim at the Society's office, but had not spoken with him.

Mrs. Lo's recording in the Society's file states that during this meeting she informed Annals Popen and Jennifer Popen that the Parent Effectiveness Training Course, would begin on April 22, 1976 and

"Kim would not be returned home to live until we see how they respond to the course."

The same recording notes Jennifer Popen's belief that Kim would begin to visit in the home on March 25, 1976.

Mrs. Lo testified that the Parent Effectiveness Training Course did not begin on April 22, 1976, but was delayed. From Mrs. Harvey's testimony, I gather the Course began on April 26, 1976. From the pre-sentence report I gather that Mrs. Lo informed Mr. Brouwer that the Course ran for a period of eight weeks.

Thus by May 7, 1976, when the decision was made to return Kim to her home on May 27, 1976, only two sessions of the Course had been held. There was no firm evidence that Annals Popen and Jennifer Popen or either of them attended either of those sessions. By May 27, 1976 some sessions of the Course would have been held, but again there was no good evidence as to the attendance of Annals Popen and Jennifer Popen.

Similarly there is no good evidence as to what benefit Annals Popen and Jennifer Popen or either of them derived from the Parent Effectiveness Training Course, either at its conclusion or by May 7 or by May 27, 1976.

Mrs. Harvey in her testimony acknowledged that the Parent Effectiveness Training Course was not designed to prevent child abuse, but rather was

designed to teach parenting skills, that is to teach parents to raise, direct and discipline children. She felt that such a course would be of indirect assistance to parents involved in a child abuse situation in that, in her opinion, in such a situation lack of communication and cohesion between the parents is a problem. She felt that inability to communicate was a problem for Annals Popen and Jennifer Popen.

In her testimony upon the Inquiry, Mrs. Lo said that her understanding was that the Parent Effectiveness Training Course was

"to help the parent to communicate with the child"

as by showing discipline and love at the same time. She acknowledged that that was removed from child abuse, but, like Mrs. Harvey, she said it was related in the overall picture because she understood that most abusive parents did not know how to discipline their children.

While Mrs. Harvey, in that portion of her testimony which I have just mentioned, seemed to defend the selection of the Parent Effectiveness Training Course as a required course of instruction for Annals Popen and Jennifer Popen, her subsequent response in testimony was, in my opinion, a far more eloquent statement as to the value of the course in the particular circumstances. It was really a statement that the Course lacked value in the particular circumstances.

That response was as follows:

"I might explain one other thing about the use of the Parent Effectiveness Course (sic). We had searched high and low in the community to find something that we could provide for this family over and above counselling. You can't be there twenty-four hours a day. We wanted to have a learning process in addition to what we had, and all we could find in the community that was available to us was the Parent Effectiveness Training Course and I had been discussing it with Mr. Stevens

beforehand. It was not held at Lambton College, it was held in the Agency and the agency put up part of the funds in order to have it.

Q. Put up?

A. Part of the funds.

Q. But it was held under the aegis of Lambton College, was it?

A. No, it was held under the aegis of the Parent Effectiveness Training Course and we had a special contract with that.

Q. I see.

A. Mr. Stevens was giving it at Lambton College but it was much too expensive for many of our clients to attend, therefore, we had it at a reduced rate at the agency so that more clients could avail themselves of it, but it was the only thing available in this whole community."

I am not satisfied that the Society and Mrs. Harvey really felt that the particular Course, apparently of value to so many of the clients of the Society that the Society made special arrangements for it to be made available to them, would be of real value to Kim's parents and thus to Kim. Their case was different from any other in the community at the time.

Mrs. Harvey summed it up when she said:

"it was the only thing available in this whole community."

In requiring Jennifer Popen and Annals Popen to attend the Parent Effectiveness Training Course, Mrs. Harvey was making a gesture of doing something to help them and Kim. It was merely a gesture and no more.

There was no evidence of any search, by the Society or Mrs. Harvey, as to any course, wherever available, specifically designed to be of assistance

to the parents of any child abused by the parents or one of them or to be helpful to Jennifer Popen or Annals Popen.

Mrs. Harvey testified that the person leading the Parent Effectiveness Training Course was not, during the delivery of the Course, aware that Annals Popen and Jennifer Popen were the parents of a child who had been abused, perhaps by one or both of them. She said she deliberately did not inform the leader that Annals Popen and Jennifer Popen were involved in a child abuse situation because she felt his role in the Course was to deal with problems any of the group brought to him and she did not want Kim's parents to be singled out as being abusive parents.

I have difficulty, if indeed I have any capacity, to understand the rationale of that statement. If the leader was to help Annals Popen and Jennifer Popen by dealing with any problem they presented, how could he deal with the fact that their problem was that their child had been abused, perhaps by either or both of them, unless he knew that their child had been abused? In the nature of group discussion which Mrs. Harvey's testimony seemed to suggest would follow upon any problem being presented by someone taking the Course, how could anyone prevent other members of the group from knowing that Annals Popen and Jennifer Popen were involved in a child abuse situation?

Further how could two people such as Annals Popen and Jennifer Popen be expected to present their problem to the group leader in any meaningful or honest way so that he could assist them in its resolution. According to Mrs. Harvey, they were unable to communicate even with one another. Many witnesses commented to the effect that Annals Popen had difficulty expressing himself and permitted Jennifer Popen to dominate any conversation. Jennifer Popen was so facile, but yet so untrustworthy, in her stories, as to be described by Mr. Carter as a "proverbial liar."

In this connection one must remember Dr. Curtin's comment that the Popen family history as presented to him was so bland as to cause him to

wonder about the reliability of what he was told. Mrs. Maughan expressed a somewhat similar thought.

I just do not believe that Mrs. Harvey really believed that Jennifer Popen or Annals Popen would properly and honestly put to the leader of the Parent Effectiveness Training Course any problem which existed in their home or would acknowledge that Kim was the victim of abuse.

In connection with any assessment of the Parent Effectiveness Training Course in relation to Annals Popen and Jennifer Popen, I must recall Jennifer Popen's testimony that she felt it was not of particular value to her as a parent of a young child. She testified that it appeared to be designed to instruct and assist parents who had difficulty in disciplining older children.

From the emphasis placed on the Parent Effectiveness Training Course by the Society in the various recordings and by Mr. Brouwer in the pre-sentence report, probably on the basis of the understanding he obtained from Mrs. Lo, and even by Dr. Curtin in his report on Annals Popen dated March 19, 1976 when he places reliance on Annals Popen's

"[attendance at] whatever courses Mrs. Harvey, the Public Health Nurse (sic) might set up,"

I had gained the impression that the Parent Effectiveness Training Course was of paramount and direct importance in assisting Annals Popen and Jennifer Popen. It was anti-climactic to hear Mrs. Harvey describe it as being "all that was available" and of only indirect assistance to them.

However, the potential value of the Parent Effectiveness Training Course in the present instance being whatever it was, there remains the question of what was done by the Society to ensure that Kim's parents did in fact benefit from the Course.

In her recording for April, 1976, Mrs. Lo wrote a long paragraph relating to the Parent Effectiveness Training Course and the involvement of Annals Popen and Jennifer Popen in it. Even in that recording there is a note that Jennifer Popen felt

that most problems raised in the Course related to teen-aged children rather than to younger children.

It would seem to me that that note should have triggered something more from the Society than Mrs. Lo's action which, she noted, was to encourage Annals Popen and Jennifer Popen to raise in the class the question of problems with younger children. Mrs. Lo would have to be entirely naive to believe that Annals Popen or Jennifer Popen would respond positively to any such encouragement.

Particularly in light of all the problems noted in that paragraph and which Annals Popen and Jennifer Popen claimed to be having in the Course that suggestion seems to have been futile. They said they were shy, but were overcoming it. Annals Popen said he was having trouble with his eyes and could not read for long; so Jennifer Popen and he read alternate pages. Annals Popen said he found it hard to write because he used his left hand; so, as one solution, he gave his answers to Jennifer Popen for her to write.

In her recording under date of March 18, 1976, Mrs. Lo wrote of a discussion she had with Annals Popen and Jennifer Popen with reference to the Parent Effectiveness Training Course and of her having told them:

"Kim would not be returned home to live until we see how they respond to the course."

That indicates to me the great importance Mrs. Lo placed upon the Course.

In her recording of May 6, 1976, Mrs. Lo noted that:

"Since the home situation has been greatly improved and both parents are doing their best to get things out of the P.E.T. course..."

Those were factors apparently to be considered by the Society's personnel in connection with the decision as to when Kim was to be returned to her parents' home.

Mrs. Lo did not at any time indicate the basis for either of those statements in her recording. On the evidence presented upon the Inquiry, I am unable to find that there was any valid factual basis for either of them.

I have already set forth some excerpts from Mrs. Kirby's recording dated April 26, 1976 and her oral testimony enlarging upon it. That related to the Parent Effectiveness Training Course and the progress of Annals Popen and Jennifer Popen in it.

Nowhere in the recording in the Society's files is there any reference to any effort by Mrs. Lo or anyone else at the Society to inquire of anyone, other than Annals Popen and Jennifer Popen, as to how they were progressing in the Parent Effectiveness Training Course. There was no such inquiry even as to whether they were attending the course let alone whether they were understanding it and benefitting from it. Mrs. Harvey did say she knew they were attending, but she did not state the source of that knowledge. I am not satisfied that Mrs. Harvey knew any such thing.

Nowhere in the evidence upon the Inquiry was there any indication that any effort to learn the progress of Annals Popen and Jennifer Popen upon the Parent Effectiveness Training Course had been made by any of the Society's personnel. Mrs. Harvey did testify as to having spoken with the director of the course. She spoke of that gentleman's satisfaction with the results he felt Annals Popen and Jennifer Popen achieved, but he had not earlier been aware of the reason for the Society's involvement in their lives. The conversation clearly was after the Course was completed and after Kim had been returned to her home.

Thus I am satisfied that, while Mrs. Lo and Mrs. Harvey, both in recordings in the Society's files and in testimony upon the Inquiry, mentioned the importance of the Course in the deliberation as to Kim's future, that was mere lip service. They made no effort to obtain any assessment of how Annals Popen and Jennifer Popen or either of them "responded" to the Course, to use the verb written by Mrs. Lo in her March 18, 1976 recording.

In my opinion, Mrs. Harvey and Mrs. Lo deluded themselves and perhaps Mrs. Kirby and others of the Society's staff in this regard. Mrs. Lo was aware of problems. She recorded them under date of April, 1976. Mrs. Maughan had noted other problems. She felt that some of them indicated that Annals Popen and Jennifer Popen were not benefitting fully from the Course. Despite her awareness of problems Mrs. Lo did nothing to resolve them except to speak with Annals Popen and Jennifer Popen. Nor did Mrs. Harvey, who was supposedly so closely supervising Mrs. Lo's work with the Popen family, do anything to resolve them.

In my view all of this is, at best, an instance of good intentions without adequate preparation and follow-up to ensure fulfillment of those intentions. At worst it was the creation of a mirage, an illusion of beneficial activity. I think it was closer to the worst than to the best.

Whatever decisions were made by the Society during this period of time were based on Mrs. Lo's observations in the Popen home and on what she was told by Annals Popen and Jennifer Popen. The Society did not avail itself of whatever might have come from inquiries directed to other persons or agencies, such as the director of the Parent Effectiveness Training Course, Mr. Brouwer and Mrs. Maughan of Probation Services, Mrs. Kuly of The Lambton Health Unit, the Sarnia Police Force, St. Joseph's Hospital and various doctors and medical personnel all of whom the Society knew had recent if not immediately current involvement with the Popen family. The Society made no such inquiries.

After Kim's return to her home on May 27, 1976, Mrs. Lo was the only Society worker who visited the home.

Her first visit after Kim's return was on May 31, 1976. On that visit Jennifer Popen spoke of Kim having temper tantrums. Mrs. Lo gave Jennifer Popen some advice in that connection.

Mrs. Lo continued in her recording and her oral testimony upon the Inquiry to refer to her visits after May 31, 1976. They were semi-weekly for perhaps two weeks and thereafter were weekly. She

indicated that in the period to June 16, 1976 the parents were readjusting to each other, presumably in relation to the change in circumstances brought about by Kim's return. She said that while they were having some difficult moments with Kim they seemed able to handle it. She said that latter comment was based on what she was told and what she observed.

Mrs. Lo's recording for the period from June 1 to June 16, 1976 contains reference to Kim's having stomach flu "near the end of June." Either that reference to time is in error or the events recorded occurred later than June 16, 1976 and the recording was made at some time after June 16, 1976. This is another instance of error, however caused and however unimportant, in the Society's recordings and files.

I assume that Kim did suffer from stomach flu some time in June and was teething and miserable and that she would not eat much and that she was up at night, all as recorded by Mrs. Lo in that portion of her recording. Even though the same paragraph of the recording makes reference to the imminent birth of Jennifer Popen's expected child and some of her problems in that connection, Mrs. Lo did not see fit to require or suggest that Kim be examined and treated by a medical doctor. There is no written or oral testimony that Mrs. Lo even saw Kim during this period of time.

Mrs. Lo testified that immediately upon Kim's return home she spoke with Annals Popen and Jennifer Popen about undressing Kim to examine her if she, Mrs. Lo, felt it was necessary to do so. When, based on the testimony of Douglas Vandenburghe, counsel suggested to Mrs. Lo that she had told Annals Popen and Jennifer Popen that she had the right to undress Kim and examine her, but that it was embarrassing to her to do so, Mrs. Lo denied the latter part of that suggestion.

Mrs. Lo said neither parent raised any objection to her undressing Kim. She said she would have thought it necessary to undress Kim if she had observed any physical marks upon Kim or any unusual behaviour by Kim. Since she did not undress Kim for examination at any time, I can only conclude that Mrs. Lo did not make any such observation although,

as she testified, Kim, lightly dressed as for summer, would sit on her lap and she would look at Kim.

It would seem that the discussion between Mrs. Lo and Annals Popen and Jennifer Popen arose on Mrs. Lo's own initiative and not as a result of any direction.

Mrs. Lo testified that she was not at any time instructed by Mrs. Harvey or anyone as to how she should examine Kim. Mrs. Harvey's testimony was that she had instructed Mrs. Lo to watch very carefully for any bruise or anything which would alert her to any change in the child. Mrs. Harvey said she did not discuss with Mrs. Lo the matter of her undressing Kim. I gather there simply was no thought given to it. As Mrs. Harvey put it, she did not lay down rules and regulations for Mrs. Lo.

That was error on the part of Mrs. Harvey. She was derelict in her duty as supervisor of Mrs. Lo, an entirely untrained and inexperienced employee. More importantly she was derelict in her duty, as an employee of the Society, to protect Kim.

If ever anyone needed rules and regulations in a particular situation, Mrs. Lo needed them in this situation.

In a sense in reinforcement of my belief and concern that the recordings in the Society's files were not kept current, as indicated by Mr. Carter's lengthy recording dated February 29, 1976 to cover a period of about six months' duration, Mrs. Lo testified that her recording for the period from June 17 to July 6, 1976 was probably dictated in mid-July or toward the end of July.

Mrs. Lo testified that the material found in that paragraph came from Jennifer Popen although later Annals Popen spoke to her about it as well. In that paragraph Mrs. Lo wrote of Kim playing one parent against the other and being difficult to discipline in Annals Popen's absence. She wrote of Kim as an active child who often bumped into things and hurt herself, much to the concern of Annals Popen who cautioned Jennifer Popen to be careful of Kim lest the Society take her again. Mrs. Lo said that in that conversation with Annals Popen she reassured

him that he should not have such concerns as to the possibility of Kim's removal by the Society.

Mrs. Lo testified that she did not know if this was an effort by Jennifer Popen to cover up any injuries which Mrs. Lo may have observed upon Kim. Mrs. Lo testified that she recalled having seen only one bruise upon Kim's body. That bruise was on one of her fingers. Jennifer Popen told her it was caused by Kim putting something into an electrical outlet. Mrs. Lo said that later she had seen Kim put something into an electrical outlet.

Mrs. Lo testified that until Kim's death she accepted Jennifer Popen's explanation with reference to any bruise which Kim may have suffered.

The next series of entries in Mrs. Lo's recording cover the period from July 7 to July 23, 1976, the period immediately following the birth of Jennifer Popen's youngest child, Karie.

Mrs. Lo testified, as she has written, that:

"for the last couple of times [of Mrs. Lo's visits] Jennifer appeared very tired, cold and distant to [Mrs. Lo]."

Mrs. Lo testified that she noticed a dramatic change, presumably of a negative nature, in Jennifer Popen's attitude toward her after Jennifer Popen returned home with the baby. Mrs. Lo said she attributed that change of attitude to Jennifer Popen's being tired with two children and fearful that the Society would take the second child from her.

In explaining that opinion Mrs. Lo said she felt Jennifer Popen had not fully understood why Kim had been placed in the care of the Society and thus feared that the second child might be removed from the home even though there was no suggestion that he had been abused in any way.

In the light of Dr. Bates' testimony, it is interesting to note that neither in her recording in the Society's file nor in her oral testimony upon the Inquiry did Mrs. Lo make any reference to *post-partum* depression. Either she was not aware of it or

did not recognize it as possibly being a factor in any change in the attitude of Jennifer Popen.

The absence of any such observation is all the more noteworthy upon reading the report of Dr. Selwyn M. Smith, Director of the Department of Forensic Psychiatry and Associate Professor of Psychiatry, University of Ottawa, dated December 12, 1977. Dr. Smith had examined and treated Jennifer Popen. In the specific area of interest in this Chapter of the Report he wrote:

"Approximately five weeks before the death of Kim, another child, Kerry, was born on July 6, 1976. Kerry was a breech birth and Mrs. Popen left the hospital earlier than advised because she had been told that Kim had been crying for her and was not eating properly. Shortly after her return home, a number of problems ensued. Kerry developed a fever, had diarrhea, and was a very fractious and difficult baby. Mrs. Popen was up most of the night for several nights and described how the child would only sleep when it was held or rocked. In addition, Mrs. Popen was experiencing considerable pain associated with her breech delivery. She did have a 15 year old baby sitter to help her and Kim was spending some time with a neighbour. Nevertheless, Mrs. Popen did not feel well and was taking a number of sleeping tablets and analgesics."

Although those comments may be based upon information from an unreliable source, Jennifer Popen, they may very well be correct. The Society did not make any effort to ascertain the state of Jennifer Popen's health, physical or emotional, following Karie's birth. In my view that is another default by the Society, Mrs. Harvey and Mrs. Lo.

It should be noted that until Dr. Bates, the last witness to testify upon the Inquiry, there was no mention of *post-partum* depression and neither that expression or any similar expression appeared in any of the recordings in the files of the Society.

If Mrs. Lo felt that Jennifer Popen did not fully understand why Kim was in the care of the Society, she, Mrs. Lo, certainly had not done a very good job in her self-stated role of helping both parent and child.

If Mrs. Lo sensed that lack of understanding by Jennifer Popen and noticed that dramatic change in Jennifer Popen's attitude toward her, I am at a loss to understand why Mrs. Lo was able to write, as she did for example in the recording under date April, 1976:

"The family situation keeps on progressing"
and under date May 6, 1976:

"Since the home situation has been greatly improved..."

and under date from June 1 to 16, 1976:

"The overall situation is under control."

In my opinion there was no factual basis for any of those statements.

Surely comprehension by both parents that Kim was in the care of the Society because they had, at least, not protected her from physical abuse would be basic to any successful resolution of the problems in the family which had led to involvement of the Society in Kim's case. Such comprehension would be required before Mrs. Lo could accurately write as she did in the three passages which I have just set forth.

In the recording for the period from July 7 to 23, 1976, Mrs. Lo wrote:

"Jennifer looked very unhappy but she was not able to share it with me as to what was bothering her."

She continued to note that Jennifer Popen appeared to be upset when Mrs. Lo queried whether Annals Popen tended to take his frustrations out on the children.

From that it would seem that Jennifer Popen was not any more communicative than she chose to be and that Jennifer Popen, not Mrs. Lo, was in command of the situation. It would also seem that Mrs. Lo was, in that recording, indicating a suspicion that Annals Popen was the abusing parent. That was so even though she had testified as to having been told by Mrs. Harvey that Jennifer Popen was believed to have been the parent who had abused Kim and so should be the main recipient of the Society's attention. That was so even though she testified as to her own lingering suspicion that Jennifer Popen had abused Kim.

In the penultimate paragraph of the recording for that period, from July 7 to 23, 1976, Mrs. Lo wrote of having discussed with Jennifer Popen her fear of the Society. Mrs. Lo testified that she indicated to Jennifer Popen that the Society would not seek even a supervision order in respect of Kim upon the expiration of the six month period of her wardship granted to the Society on February 25, 1976 and that thus Mrs. Lo would no longer have a legal right to visit the Popen home. Mrs. Lo testified that at that time she believed that was the intention of the Society.

Nowhere in the Society's recordings is there any notation of any discussion between or among Mrs. Lo and Mrs. Harvey or others at the Society with reference to the formation of any such intention. Mrs. Lo's oral testimony made no reference to any such discussion.

Mrs. Dorothy Myers, office manager of the Society, testified that on July 26, 1976 she reminded Mrs. Lo that the Court's Order with reference to Kim's custody would expire on August 25, 1976 unless application were made for extension or variation of it. There was no evidence to indicate that Mrs. Lo then advised Mrs. Myers of the intention of the Society to permit the Order to expire without any order for continued supervision by the Society. Mrs. Myers continued her testimony to say that on August 3, 1976 she spoke to Mrs. Harvey and Mrs. Lo together about the matter and they instructed her to prepare an application for an order for supervision by the Society. Again there was nothing to indicate that

that instruction replaced any earlier contrary intention.

In that same paragraph of her recording Mrs. Lo wrote of Jennifer Popen's denial of the existence of trouble between Annals Popen and herself. Mrs. Lo in this area wrote that she had suspected that such trouble did exist.

Mrs. Lo did nothing else to satisfy herself as to the presence or absence of such trouble between Kim's parents. Solely on the basis of Jennifer Popen's denial of the existence of any such trouble Mrs. Lo was prepared to tell her that the Society would not seek an order authorizing the Society's supervision of Kim beyond August 25, 1976.

If there were any suspicion of trouble between the parents or if there were any suspicion of one or both of them taking out frustration on Kim, the Society should have fully explored each of those areas before arriving at any conclusion as to the future role of the Society in Kim's life.

In the last paragraph of that recording for the period from July, 7 to 23, 1976, Mrs. Lo wrote of Jennifer Popen's being loving toward Kim and Kim's smiling and singing. Mrs. Lo testified that she discussed that with Mrs. Harvey who stated that that observation by Mrs. Lo indicated that the timing of Kim's return to her home on May 27, 1976 had been perfect. Mrs. Lo testified that Mrs. Harvey and she felt that the situation in the Popen home was then under control.

Mrs. Lo testified that apart from Jennifer Popen's attitude during the one visit between July 7 and 23, 1976 she had not sensed any resentment by Jennifer Popen of her visits such as Mr. Vanderberghe had mentioned in his testimony or such as Mrs. Maughan had recorded and mentioned in her testimony.

In the last paragraph of her recording for the period from June 1 to 16, 1976, Mrs. Lo wrote of Jennifer Popen's criticism of Mr. Higgins and his conduct of the defence of the proceedings in the Court.

Thus it would seem Jennifer Popen was expressing negative criticism of just about everyone directly involved in the entire proceedings and the care of Kim. But she was not expressing such criticism to the person who was the subject or object of any particular statement of criticism. I have the impression from their respective testimony that neither Mrs. Maughan nor Mr. Higgins sensed that Jennifer Popen was criticizing her or him, nor did Mrs. Kuly sense that Jennifer Popen criticized her conduct.

Under date of July 26, 1976, Mrs. Lo wrote that she had telephoned the Popen home to arrange a time to see them, but she sensed that Jennifer Popen

"was trying to put me off."

Mrs. Lo testified that as a result of that and the coldness in Jennifer Popen's attitude mentioned in the prior recording for the period from July 7 to 23, 1976, she spoke with Mrs. Harvey and discussed with her the advisability of applying for an order for supervision of Kim by the Society. Mrs. Lo said that by then she did not feel that the Society's relationship with Jennifer Popen was stable enough and that Jennifer Popen would resist any help from the Society unless it were pursuant to an order of the Court. She testified that she felt continued supervision of the Popen family situation was necessary and that the Society could not leave the situation on August 26, 1976.

Mrs. Lo testified that when she first told Jennifer Popen and Annals Popen that the Society would not seek any Court order effective beyond August 25, 1976 she had told them that, nonetheless, she would continue to visit them on a friendly unofficial basis. She said that at that time they were receptive to that suggestion, but thereafter their attitude fluctuated from friendly and receptive to cold and distant.

None of that is set forth in Mrs. Lo's recordings in the Society's files. Nor do those recordings indicate that Annals Popen was directly involved in or even present at or part of any of the events or occurrences that Mrs. Lo mentioned in her

oral testimony as forming a basis for her change of mind.

Mrs. Lo recorded under date of July 26, 1976, and testified orally that Mrs. Harvey and she decided that the Society should apply for a supervisory order before expiration of the wardship granted to the Society on February 25, 1976. She wrote that this was because Kim was a difficult child, a second child had been born and the home situation was not stable enough. There was no evidence to satisfy me as to the validity of the statement that Kim was a difficult child. I am satisfied as to the validity of the two remaining statements. That the home situation was not stable enough should certainly, in all the circumstances, have been the dominant reason for seeking a supervising order.

It would be in about this area of Mrs. Lo's recording that I would have expected to find some mention or consideration of the matters of which Dr. Smith wrote in December, 1977.

That change of attitude by the Society was at least as sudden and dramatic as any change of attitude by Jennifer Popen. If that change of attitude by the Society was justified, and it was, one must wonder about the tenuousness or validity of the earlier attitude, positions and decisions of the Society and the basis or bases therefor. One must also wonder how shallow was the knowledge that the Society had of the Popen family and how it was applied in deliberations by the Society as to its management of Kim's life, including Mrs. Harvey's decision that Kim was to be returned to her home.

Mrs. Lo did not record, but she did testify orally upon the Inquiry, that a reason for her wanting a supervisory order was her desire to be able to keep an eye on the family and to ensure that Kim was not abused.

If she had such a desire, I wonder how she could have concurred in any proposed decision by the Society to withdraw from the supervision of Kim on August 26, 1976. Any such desire must have been rooted in a belief or suspicion that Kim was still exposed to possible abuse and was still a child in

need of protection under the terms of The Child Welfare Act.

I gather, from Mrs. Lo's recordings and her oral testimony, that during the period beginning on May 27, 1976, she had noticed various changes in Jennifer Popen's moods and attitudes. Some of the changes were observed in personal contact between Mrs. Lo and Jennifer Popen. Thus Mrs. Lo's assessment of them might have been more soundly based than her assessment of the significance of a very brief telephone conversation on July 26, 1976. To my mind Mrs. Lo's description of the various occurrences prior to July 26, 1976 would indicate that some of the earlier occurrences, such as those recorded under date of June and July, 1976, were of greater significance than the telephone conversation of July 26, 1976.

Mrs. Lo continued in her recording and oral testimony to state that on the evening of July 26, 1976, she visited the Popen home and, in the absence of Annals Popen, advised Jennifer Popen that the Society had decided to apply to the Court for a supervisory order in respect of Kim. Mrs. Lo testified orally, as she had recorded, that Jennifer Popen was apprehensive.

In her oral testimony she said Jennifer Popen did not understand why the Society would seek such an order. Under date of July 26, 1976, Mrs. Lo recorded that she had tried to explain to Jennifer Popen why the Society sought the order. She did not indicate what that explanation was, but she did write:

"At 6:30 p.m. home visit was made to the Popens. Mr. Popen had not come back from work yet. Knowing that I was going to discuss something important, Jennifer had her friend Judy Vandenberghe there. She was very nervous and apprehensive."

In her oral testimony, Mrs. Lo said she had seen Kim that evening. She said Kim was climbing up and down on the couch and seemed happy. She said she saw nothing unusual about Kim.

Mrs. Lo continued her recording to indicate that on July 27, 1976, she again visited the Popen home to serve notice of the hearing of the Society's application returnable in Court on August 4, 1976. She recorded that Jennifer Popen was relaxed, but was barbecuing and spent little time with Mrs. Lo. Mrs. Lo recorded that Annals Popen said he understood why the Society was seeking the order and that that was "alright with them." Mrs. Lo in her oral testimony said that both Jennifer Popen and Annals Popen said they would not retain a lawyer to oppose the Society application and that they agreed with it.

Mrs. Lo testified that she had not seen Kim on July 27, 1976. She said that Kim was in the kitchen having her supper. There is no indication as to the source of Mrs. Lo's information to that effect. In the light of the pattern which I have mentioned earlier, that is to obstruct visitors from seeing Kim, I can only wonder if this was another part of that pattern.

Mrs. Lo advised Jennifer Popen and Annals Popen that on August 4, 1976 the Society would ask for an adjournment of the hearing. No reason for the adjournment was stated. Accordingly it was arranged that Jennifer Popen and Annals Popen would not attend Court on August 4, 1976, but Mrs. Lo would keep them advised of the proceedings.

No one of the Society who testified upon the Inquiry, except Mrs. Lo, explained in such testimony why it would be necessary to ask for an adjournment. In the light of the parents' indicating that they would not oppose the application it would seem to me that an adjournment was simply an unnecessary delay and, but for Kim's death, would have involved unnecessary expenditure of time of the Society's personnel in Court attendances and unnecessary use of what were obviously precious and scarce Court time and facilities. Mrs. Lo's explanation for seeking the adjournment was that the Court list for August 4, 1976 was heavy. But it would seem, on the evidence, that every day's list was heavy.

Mrs. Lo visited the Popen home on August 4, 1976 and, in the absence of Annals Popen, advised Jennifer Popen that the hearing had been adjourned.

I have read the transcript of the proceedings in Court on August 4, 1976. It indicates that Mrs. Lo represented the Society and advised Judge Nighswander that the original order for wardship would expire on August 23 (sic) and

"due to the fact that a second child is born into this family at the beginning of July and Kim is a very difficult child, we ask for a supervision order."

She went on to say that she sought an adjournment:

"since today we have quite a number of cases to be heard in this court."

In my view Mrs. Lo was less than candid when she advised the Court that Kim was a very difficult child and, by inference therefrom, the cause of the application being made to Court. On the basis of Mrs. Lo's testimony upon the Inquiry, the application to the Court was made only because of a change in the attitude and actions of Annals Popen and Jennifer Popen or one of them on learning that the order would expire on August 25, 1976 and the Society would not seek any extension or renewal of it.

Discussion between Judge Nighswander and Mrs. Lo in Court indicated that the next Court day would be August 30, 1976 and that there might be many emergency cases on that date. Therefore the Popen hearing was adjourned to September 13, 1976.

One portion of the transcript recording some of Judge Nighswander's comments or questions to Mrs. Lo and her responses is particularly significant. It is as follows:

"Judge: ...This is the last court day until September, so is it the agency's intention to ask for a supervision order for the child--in other words, the child to be returned to the parents subject to the supervision of the Children's Aid?

Mrs. Lo: Yes.

Judge: Are you the worker with the family?

Mrs. Lo: Mmhhh.

Judge: Are they going to be in agreement with this, do you know?

Mrs. Lo: Yeah, they are, un-huh."

Following that exchange the matter was adjourned and Judge Nighswander added:

"...and the child committed to the care and custody of the Children's Aid Society of the City of Sarnia, County of Lambton, until that date."

This, in my view, indicates that Judge Nighswander was unaware that Kim had already been returned to her parents' home. Mrs. Lo certainly did not advise him that Kim had been returned to that home more than two months earlier.

Mrs. Lo testified that on August 4, 1976 Kim sat next to Jennifer Popen and that she, Mrs. Lo, had not seen any mark on her lip or any other injury to her. Mrs. Lo said she was eight or ten feet from Kim and did not hold or examine her that day.

In her oral testimony, Mrs. Lo said that any "examination" she made of Kim at any time was made rather casually

"so the mother [Jennifer Popen] wouldn't get resentful."

Sometimes Kim would come to Mrs. Lo or sometimes Mrs. Lo would call her over. In such instances Mrs. Lo would then look at Kim while showing her something or playing with her.

Clearly those were not "examinations" in any sense of the word. They were restricted, by Mrs. Lo's own choice, to observation of those parts of Kim's body not covered by whatever clothing she was wearing and, even further, because they were conducted surreptitiously so as to avoid resentment by Jennifer Popen.

As to noticing anything which would alert her to any change in Kim, as Mrs. Harvey said she required, Mrs. Lo testified she had not noticed any unusual behaviour by Kim or any unusual aspect of the relationship between parents and child to cause her to suspect that Kim was being abused.

Upon the Inquiry, Mrs. Lo was shown some of the photographs of Kim's dead body. She testified that she had not, on August 4, 1976, seen any of the injuries shown in the photographs. She did testify that she had seen only one injury to one of Kim's fingers and that was some weeks earlier. She said that was the only injury to Kim she had ever seen.

Mrs. Lo testified that when she viewed Kim's body in the hospital on August 11, the mark on her lip was very obvious. She said that if the mark had been on Kim's face on August 4, 1976:

"I should have seen it."

Mrs. Lo testified that she had never suspected any abuse to Kim involving injury to her genital or anal areas or indeed abuse at all during this period of time and that she had never undressed Kim. She said that had she suspected abuse she would have undressed Kim.

That comment of course then begs the question as to Mrs. Lo's competence to recognize, let alone assess, the importance of any indicia of possible abuse of Kim.

Mrs. Lo testified that on August 4, 1976 Kim was quiet, but did not appear to be dazed.

Mrs. Lo had no further contact with the Popen family until she was advised on August 11, 1976 that Kim had died. She saw Kim's body that night. She noticed some of the injuries shown in the photographs. She said she was totally shocked by the injuries she did see.

On August 12, 1976, Mrs. Lo spoke with Jennifer Popen. She said Jennifer Popen told her Kim fell from the high chair the day before, apparently August 10, 1976, and appeared to limp and to be

dazed. She said Jennifer Popen told her Kim fell from the porch.

Thus ended the Society's wardship of Kim.

What I have called the ring of tragedy surrounding Kim was complete. Kim was dead.

Chapter X

The Post-Mortem Examination

Dr. Patodia testified as to the post-mortem examination of Kim's body which he conducted on August 12, 1976 following a preliminary examination of her body on August 11, 1976.

Dr. Patodia had prepared a report upon that post-mortem examination together with diagrams illustrating the location of various injuries upon the body. That report and those diagrams were produced and received as exhibits upon the Inquiry.

In the post-mortem report, Dr. Patodia described external marks of violence which he had found on Kim's body. In his testimony upon the Inquiry he elaborated upon some of those findings as written in the post-mortem report.

In the first column below I set out the description of an external mark of violence as recorded by Dr. Patodia in the post-mortem report. In the second column I set forth any significant, to me, elaboration therein contained in his oral testimony upon the Inquiry.

<u>External Marks of Violence as Recorded in the Post- Mortem Report</u>	<u>Elaboration thereon in oral testimony (if any)</u>
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- | | |
|--|---|
| 1. Reddish purple contusions over the forehead near the hairline measuring 1.5 x 0.8 cm. and 0.8 x 0.5 cm. | 1. These two contusions or bruises were more or less in the centre of Kim's forehead. Bruising changes in colour over a period of time -- perhaps from reddish blue, purplish, to brown to blue to yellowish, greenish and ultimately brownish. |
|--|---|

Reddish purple is a sign of a rather recent injury.

Depending upon the training of the observer in the field of medicine, those injuries might be difficult to assess as being injuries worthy of observation and comment during Kim's life. A lay person might not have noticed them.

-
1. Reddish purple contusions over the forehead near the hairline measuring 1.5 x 0.8 cm. and 0.8 x 0.5 cm.

All of these injuries (numbered 1 to 6) occurred "within a few days of death -- within one to five days."

2. Rounded contusions over left cheek measuring 0.8, 0.5 and 0.2 cm. in diameter and these are reddish purple in colour.

The injuries to the head were caused by light moderate degree of blunt trauma, as by a hand, nails or an instrument.

3. 0.6 cm. clean incision with red base 4.5 cm. below the left earlobe.

An abrasion is a superficial cut, more like a scrape. An incision is a clear cut by a sharp instrument.

4. Lower lip in the centre shows 0.8 x 0.5 cm. superficial irregular abrasion with crust on the surface. Base is brownish red. Smaller abrasion on the inner surface.

5. Left ear shows few small abrasions measuring up to 0.5 cm.

6. Contusion with scratch marks over external surface of right ear.

7. Reddish blue contusion (1 x 0.5 cm.) over left side of posterior chest in the posterior axillary line 7 cm. below the axillary fold.

These injuries (numbered 7 and 8) were caused within a few days of death, that is within one to five days and could be caused by striking with a blunt instrument or by a similar force.

8. Irregular purplish blue contusions (1 to 3 cm.) over dorsal surface of left elbow and forearm.

This chest injury is about 7 cm. below the fold of the armpit.

9. Irregular contusions over palm of left hand along with few abrasions.

These injuries (numbered 9, 10, 11) were caused within a few days of death.

10. A small abrasion seen over palmar surface of little finger.

These were caused by slapping or by a blunt instrument or by hitting the hand hard as with a ruler.

11. Left thumb shows discolouration of nail bed and slight crusting.

12. Purplish red contusion (2 x 1 cm.) over external surface of right elbow.

These injuries (numbered 12, 13 and 14) were caused within a few days of death, that is within one to five days, and could be caused by striking with a blunt instrument or by a similar force.

13. Irregular bluish contusion (4.5 x 2 cm.) over left buttock.

- | | |
|---|--|
| 14. Purplish blue contusion (2 x 1 cm.) over right lumbar region just above the iliac crest. | The right lumbar region is, in lay terms, the small of the back. |
| <hr/> | |
| 15. Multiple bluish contusions measuring up to 0.8 cm. in maximal dimensions over mons pubis. | These injuries (numbered 15, 16 and 17) were caused within a few days of death and were moderate to moderately severe injuries. They were not the result of diaper rash. |
| 16. Irregular reddish contusions (0.5 cm.) above the vulva opening and left side of vulva. | |
| 17. Bluish contusions over left inner thigh. | |
| <hr/> | |
| 15. Multiple bluish contusions measuring up to 0.8 cm. in maximal dimensions over mons pubis. | The contusion over the mons pubis might have been caused by pinching as by pinching with fingernails. |
| 16. Irregular reddish contusions (0.5 cm.) above the vulva opening and left side of vulva. | The contusions near the vulva and over the left inner thigh might have been caused by pinching or by hitting with a hand or some instrument. |
| 17. Bluish contusions over left inner thigh. | |
| 18. Anal opening widely dilated (1.5 x 1 cm.) and patulous. | This injury was very noticeable. It would have been noticeable a week prior to Kim's death, but not necessarily if she merely stood naked in front of the observer. It would have been |

noticeable to anyone changing her diaper. The anal opening was approximately three times the normal size for a child of Kim's age.

This injury would be caused by introduction of a foreign object into the rectum.

From microscopic examination, this injury was inflicted on repeated occasions over a period of several weeks or months.

Dr. Patodia concluded that all of the injuries resulting in external marks of violence were suffered at various times within the period of one to five days prior to death.

In summary, Dr. Patodia expressed the opinion that some of the external signs of violence enumerated in the post-mortem report -- particularly the injuries to the mons pubis area and to the internal surface of the thigh, would have been noticeable, even to a lay person, on the third or fourth day prior to Kim's death. He stated that he knew the injuries to the anus and vagina were present at that time, but would not be entirely external. His opinion was that the injury to the lip and cheek would have been there at that time and that the injury to the lip might have been a first injury to it or a re-injury to it.

Dr. Patodia testified that certain of the injuries described as external signs of violence, by themselves separately, were not significant, but all or even some taken together were of significance and would cause concern particularly if the observer were aware that Kim at some earlier time had been abused.

Dr. Patodia's post-mortem examination included an internal examination of Kim's body. In the first column below I set forth the relevant findings

on that internal examination in the form as set forth in the written report of the post-mortem examination. In the second column, I set forth Dr. Patodia's oral testimony elaborating thereon at the Inquiry.

Findings on Internal Examination as Recorded in the Post-Mortem Report

Elaboration thereon in oral testimony(if any)

(e) Gastro-Intestinal System

Spleen (size and weight) 42 gm. Medical surface in the lower area show blood clot on the surface. No laceration of parenchyma seen.

There was also haemorrhage around the spleen which is close to the left kidney and adrenal. No external mark on the body related to these injuries. They were caused within a few hours -- not more than one day -- of death. They were caused by a severe blow or trauma comparable to that which caused the brain injuries set forth below.

(f) Genito-Urinary System

Adrenals (with weight) 6 gm. Haemorrhage seen around the left adrenal and no involvement of parenchyma seen.

Urinary Bladder. Few millilitres of urine. Bladder mucosa normal. Kidney and ureters. Right 38 gm. Capsular surface smooth. Left 67 gm. with surrounding soft tissue. Haemorrhage seen around the upper half as well as on the capsular surface.

The adrenal sits on top of the kidney. No external mark on the body related to these injuries. They were caused within a few hours -- not more than one day of death. They were caused by a severe blow or trauma comparable to that which caused the brain injuries set forth below.

(f) Genito-Urinary System

Vagina and Vulva. Tear of hymen seen posteriorly with reddish colouration.

This injury could be caused by the introduction of any foreign object within the vagina. As to the possibility of Kim having been raped there was no evidence of sperm.

(g) Head, Skull and Osseous System.

Scalp Haemorrhages seen in the different areas of scalp. These are seen over anterior, vertex and posterior regions. Varies from (1.5 to 3 cm. Reddish brown in colour).

Meninges and Blood Vessels

Subdural haemorrhage over the left parieto-occipital region and over right frontal lobe. These

combined weighed approximately 7 gm.

Skull (with thickness) 0.4 cm. thick. No fracture of the vault or the base seen.

Middle ears and Sinuses Not examined. Remainder of Osseous System

No fractures seen.

The most important findings or the most serious injuries were seen within Kim's head.

Kim died of subarachnoid and subdural haemorrhaging, that is haemorrhaging beneath the dura and arachnoid membranes, the outer two of three membranes covering the brain

between the outer surface of the brain and the inner structures of the bone.

In addition there was haemorrhaging above the bone and below the skin surface.

This was anteriorly, on top of the head and posteriorly.

(h) Nervous System

Brain (with weight)

Hemispheres/Ventricles/
Pons/ Cerebellum

805 gm. Both hemispheres symmetrical. Subarachnoid haemorrhages seen over the frontal and parietal lobes, over the superior medial and lateral surfaces. Subarachnoid haemorrhage is seen also over the base of

Those three areas of injury were suffered at different times, the one on top of the head appeared to be fresh. These haemorrhages could have been caused a few days prior to Kim's death and possibly were not related to the subdural and subarachnoid

the brain. Cerebellum also shows subarachnoid haemorrhage with one area showing contusion. No intracerebral or ventricular haemorrhage is seen.

Medulla. Normal.

Pituitary Body Not examined

Pineal Body Not examined

Spinal Cord Normal.

haemorrhaging and the contusion to the cerebellum. Dr. Patodia felt the injuries causing these haemorrhages above the bone were inflicted within three days of death. Exterior marks relating to the interior haemorrhaging were not observed. These three areas of injury were caused by severe trauma -- severe blows. Dr. Patodia suggested all three areas of injury occurred within a few days.

For a variety of reasons the respective areas of injury might not have occurred long enough prior to death for any indication of injury to appear on the exterior surface of Kim's skin or may have occurred too deep within the head to present any proof on the surface.

No fractures of the skull bone were seen. Subdural haemorrhaging is within the brain cavity and causes pressure on the brain.

The subdural haemorrhaging, the subarachnoid haemorrhaging and the injury to the cerebellum in combination caused Kim's death.

Dr. Patodia estimated that the injuries which resulted in the subdural and subarachnoid haemorrhaging occurred within a few minutes or hours of one another and of Kim's death. He could not suggest the sequence in which they occurred. They were caused by really severe trauma as by Kim having been hit or thrown against a wall or having suffered similar serious injury.

Dr. Bates reviewed the report of the post-mortem examination prior to testifying upon the Inquiry. He expressed the opinion that if each of several of the injuries noted in the report was seen in isolation or separately from the others it would be possible to say that that particular injury had arisen from normal activity. Dr. Bates expressly mentioned the bruising on Kim's forehead, over her ears, on her chest, on her elbows and on her forearms as falling within that thesis.

He continued his testimony to say that only rarely would a child in normal activity sustain extensive bruising extending from the head down over the rest of the body such as Kim had sustained.

He expressed concern with respect to the discolouration of the nail bed of Kim's left thumb. He said that type of injury was not very common, but he did acknowledge that it too might have arisen from normal activity.

Dr. Bates expressed the opinion that the contusion over Kim's buttocks was not such as commonly arose from a child's normal play. He said that while a child in play may fall quite heavily on the buttocks, the presence of fat and muscle in that

area tends to cushion any such fall and the impact of skin against bone.

He testified that the bruises in Kim's genital area, specifically those over the mons pubis, above the vulva and on the left side of the vulva, were such as would be found only rarely to have arisen from normal activity. He expressed the view that injuries in this area of a child's body should immediately raise concern when one considers the possibility that the child had been abused.

Dr. Bates felt that the bruising on Kim's thigh, especially on the inner thigh, would also be of some concern and raise suspicion that Kim had been abused.

Dr. Bates regarded the wide dilation of Kim's anal opening as being an injury of marked concern. He felt that that should immediately lead to suspicion that Kim had been abused.

Dr. Bates testified that, even apart from the injuries which he regarded as more serious in raising suspicion that Kim had been abused, particularly the injuries in the genital and anal areas of her body, he would have had concern that Kim might have been abused.

He testified that in most instances of sexual assault upon children there is no physical evidence of such assault, such as bruising. He concluded that immediately one would be aware that the abuse of Kim was different from the norm.

Dr. Bates expressed the opinion that if Kim's mother, Jennifer Popen, had not noticed the extensive bruising around Kim's genitalia she was negligent in her role as mother. That was his view apart from any consideration as to whether Jennifer Popen or someone else had inflicted the injuries upon Kim.

In summary of his assessment of the report of the post-mortem examination as it set forth external marks of violence, Dr. Bates testified that those external marks were consistent with injuries inflicted in a case of child abuse.

Dr. Bates testified that the injuries to Kim's brain, the subdural and subarachnoid haemorrhaging and the haemorrhage around the cerebellum, were certainly consistent with Kim's having been abused. He said that any such injury should place the possibility of abuse very high on the list of matters to be considered by anyone dealing with such a case.

Dr. Bates, while not surprised that the extensive bleeding in the skull was not visible externally, felt that such bleeding went along with extensive trauma to the head.

Dr. Bates expressed the opinion that the injury to the anus was an old injury, but he did not venture any estimate as to when it might have occurred. He testified that such an injury is hard to produce and would be caused only by the application of considerable force and the insertion of a large object into the anus on repeated occasions over a period of time. He testified that the infliction of that injury would be very painful. He felt that injury was indicative of wilfully inflicted force.

In his the opinion that the injuries to or in the area of Kim's hymen, spleen, left adrenal and left kidney were caused by trauma in those areas. He felt that the injury to Kim's spleen was caused by a direct blow to her abdomen or rib cage and that the injuries to the adrenal and kidney were consistent with abdominal trauma.

In conclusion of his testimony relative to the report on the post-mortem examination, Dr. Bates stated that Kim had been badly abused and badly beaten.

Dr. Bates expressed the opinion that Jennifer Popen's explanation that Kim had received minor injuries from falls and that she, Jennifer Popen, had struck Kim's head severely about a week before her death and that Kim became irritable and withdrawn and on the day of her death tumbled from the porch, was not consistent with the injuries which Kim had suffered. He based that opinion on the multiplicity of the injuries, their severity and the manner in which they were caused. He felt there was more than one blow to Kim's skull, very serious blows elsewhere on her body and genital molestation.

Chapter XI

Postlude to Kim's Death on August 11, 1976

While the care of Kim's brother, Karie, born July 6, 1976, is not directly a concern of this Inquiry the actions taken and opinions expressed by various persons with reference to his well-being immediately after Kim's death are of interest.

Similarly some of the opinions expressed by such persons after Kim's death, but relating thereto, are of interest.

Those actions and opinions demonstrate some of the weaknesses of the Society which led directly to Kim's death as a result of her mother's abuse upon her and her father's failure to protect her.

It is clear from the evidence of the Society's personnel that Karie's anticipated birth was, to the Society, an important factor in the decision as to when Kim would be returned to her home.

It is equally clear that the Society recognized that the effect of Kim's return home and Karie's birth, singly or in combination in whatever sequence, would create pressures within the family home and that the Society personnel would have to be especially vigilant to deal with those pressures and the problems flowing therefrom.

Responsibility for that special vigilance fell upon Mrs. Lo who was unfortunately inexperienced and untrained in the area of child abuse. Mrs. Lo looked to Mrs. Harvey for guidance. The quality of that guidance is suspect. Mrs. Lo did not receive the assistance which her own lack of skills required.

Mrs. Lo was "totally shocked" by the injuries she saw upon Kim's dead body on August 11, 1976.

On August 12, 1976, Mrs. Lo spoke with Jennifer Popen and "just listened" as Jennifer Popen told her how Kim had fallen from the high chair and from the porch on August 11. Mrs. Lo was asked if, having seen the injuries to Kim, including what Mrs. Lo, in modesty, called "a bruise, a mark on the child's lower abdomen", which I must conclude included or were the injuries to Kim's genital area, she accepted, as being true, Jennifer Popen's statement as to Kim's having fallen. Mrs. Lo responded merely "I didn't know" and said it might have been true.

When asked if having seen Kim's body she would not conclude she had been abused by one of her parents, Mrs. Lo responded "not at that time."

Mrs. Lo seems to have been one who could not or would not think ill of anyone. That may be a tribute to her in some situations. In the present instance it is not.

To my mind it is inconceivable that anyone who saw the external marks of injury to Kim might have thought they could all be suffered in a fall from a high chair, even if coupled with a fall from the porch.

That lack of comprehension increases when the thought that such injuries might have been caused by such an accident is expressed by someone such as Mrs. Lo who was aware that Kim had been severely physically abused on one or more occasions in the past and that, at least one member of the senior management of the Society, Mrs. Harvey, had expressed the belief that such abuse was inflicted by Jennifer Popen, rather than by Annals Popen who had pleaded guilty to the charge under section 40 of The Child Welfare Act. The Society, incorrectly in my view, seemed to interpret his plea as his acknowledgment that he had injured Kim.

In fairness to Mrs. Lo, I should note that while in the earlier phase of her testimony relative to the period from June 17 to July 6, 1976, she did say she "completely accepted" Jennifer Popen's explanation for Kim's injuries, or supposed injuries since she had not seen any of significance, her later testimony was that her opinion of Jennifer Popen's

credibility changed after Kim's death. But on her own testimony it would seem that it had not changed all that much.

Mrs. Lo testified that on August 12, 1976 while she visited the Popen home, the infant, Karie, was in the living room. She said she did nothing with reference to his care "because Mrs. Vandenberghe told me that she was looking after the child."

Mrs. Lo testified that on August 12 and 13 she spoke with Mrs. Harvey about the advisability of taking Karie into the care of the Society. Her testimony was that they were

"concerned about this child"
and

"were wondering, whether we should take the child into care."

She said her impression from that discussion was that there was not then sufficient evidence to take him into care and as well, he was being cared for by Mrs. Vandenberghe "so we felt we could wait for a while."

Mrs. Lo testified that later, on the evening of August 13, Mrs. Harvey telephoned to say she was going to take Karie into care. Mrs. Lo assumed Mrs. Harvey had received some further information and thus felt it was necessary to apprehend Karie. As it turns out Mrs. Harvey had no further information, but she had received two persuasive telephone calls from Dr. Duncan and Mr. Lang.

Mrs. Harvey's testimony in this area was that Mrs. Lo telephoned her at home during the evening of August 11 to advise her of Kim's death. She said the explanation for Kim's death was that she had fallen from the porch. She said the conversation was brief. Her testimony was that Mrs. Lo and she were

"both terribly distraught...shocked and horrified and sad."

Mrs. Harvey continued her testimony to say that her first reaction to Mrs. Lo's call was

"Oh my God, we've failed her."

With all sympathy for Mrs. Harvey and, through her, the Society, I can say only that that intuitive reaction was a correct assessment of what had occurred. They had failed Kim.

In response to a question as to whether she then believed Kim's death was an accident, Mrs. Harvey testified that, even then she did not know if Kim had died as a result of an accident.

Again, even more strongly than with reference to Mrs. Lo, I can only express wonderment that one with the general knowledge and experience in social work that Mrs. Harvey had, coupled with her knowledge of Kim's case and her belief that Kim had been abused by Jennifer Popen, should not have been aware of the likelihood that Kim's death was caused by abuse.

Perhaps clinically or legally at that stage one could not "know" it, but surely when asked if she believed Kim's death was the result of an accident she must have been able truthfully to express her belief rather than to retreat, as she did, to a denial of certain knowledge.

Mrs. Harvey testified that on August 12 she spoke with Mr. Lovatt and that she and Mrs. Lo spoke with a member of the Sarnia Police Force.

As to Karie's care, Mrs. Harvey seemed satisfied on August 12 that Mrs. Lo had visited the Popen home and learned that Mrs. Vandenberghe was caring for him. Mrs. Harvey expressed the view that with all of the activity relative to Kim's funeral and the attendant comings and goings it did not seem reasonable that anything would happen to Karie at that time.

Mrs. Harvey continued to testify that on August 12 the Society learned that Kim had died of abuse. She said that originally they were not given all of the information. When asked if the fact that Mrs. Lo had seen Kim's injuries, including particularly those to her genital area, did not lead to a realization that Kim had died as a result of abuse her response was:

"We were suspicious but it hadn't been clarified and we were still talking in terms of was it possible that all of these injuries could have occurred from a fall from a porch and it just didn't seem reasonable, it must have been abuse."

In her testimony Mrs. Harvey indicated that the Society had asked for but had been refused a copy of the report upon the post-mortem examination. She did not say to whom the request was made. In any event it was not pursued. Again it would seem that the Society were far from forceful in pursuing matters in which they were interested. Surely a copy of that report would have been important to the Society in determination of the course to be followed by the Society with reference to Karie.

It seems that once again the Society, this time as represented by Mrs. Harvey, behaved as it did when Mr. Higgins imposed restrictions, if not prohibition, upon its performance of its duties, at that time by Mr. Carter. Then the Society meekly accepted the restrictions. This time the Society meekly accepted the refusal. No effort was made to seek the report through any other channel. No effort was made to obtain the advice and assistance of a solicitor. The Society seemed entirely to overlook that at the time of her death Kim was, as recently as August 4, 1976, by court order made upon the adjournment of the Society application for a supervisory order, "committed to the care and custody" of the Society until September 13, 1976.

The Society appeared to be unaware of provisions of The Coroners Act, 1972, particularly section 16(2) thereof which required the coroner to make certain information, including

"the relevant findings of the post-mortem examination... available to the spouse, parents,...of the deceased and to his personal representative, upon request."

Admittedly, the Society did not specifically fall within that limited group, but by section 34 of The Child Welfare Act, it was the "legal guardian" of Kim for the purpose of her care, custody and control. While the coroner may not have been required by law

to make a copy of the post-mortem report available to the Society he was not prohibited from doing so. I would think he would have done so if asked.

I remember too that Dr. McKinley, a coroner of the County of Lambton and Mr. Lang, the Crown Attorney were concerned for Karie's welfare. Their assistance might have been sought by the Society in this connection. It was not.

Mrs. Harvey in her testimony denied that she was reluctant to remove Karie from the family home. She may not have been reluctant, but she certainly showed no initiative or desire to act.

Mrs. Harvey's version of the involvement of Dr. Duncan and Mr. Lang was that they telephoned her on August 13, 1976. She testified that she explained to them that the Society had ensured that Karie was being cared for by someone else.

That too seems to be a distortion. The Society merely accepted that Mrs. Vandenberghe was caring for him. The Society took no initiative to arrange that. In fact Mrs. Vandenberghe cared for him for only a short period of time while Annals Popen and Jennifer Popen were both away from the home.

She testified that during the conversation with Dr. Duncan at about 4:30 p.m., she asked if Dr. Duncan would support the Society by testifying as to the need for taking Karie into care. She said that having received an affirmative response she decided to remove Karie and did so after requesting and obtaining an escort from the Sarnia Police Force.

Again this admittedly was an involvement by another agency, The Lambton Health Unit, initiated by that other agency rather than by the Society. It was also an instance of that other agency, as represented by Dr. Duncan, responding favourably and without hesitation to a request from the Society for support after Dr. Duncan had initiated the discussion.

Again another agency, the Sarnia Police Force, responded favourably and expeditiously to the request by the Society for assistance.

One can only wonder why Mrs. Harvey or anyone at the Society, if in doubt as to the basis for removal of Karie from the home, would not have sought advice and assistance rather than choose to await an expression of interest from outside the Society.

As to her conversation with Mr. Lang, Mrs. Harvey admitted that he too wanted the Society to remove Karie from the family home.

Mrs. Harvey acknowledged that, but for the calls of Dr. Duncan and Mr. Lang, she might have left Karie in the home,

"until after the funeral, but not longer than that."

That answer in itself is a conundrum. How long "after the funeral" was Mrs. Harvey contemplating?

Dr. Duncan's testimony was that on August 12, 1976 she was worried about the safety of Karie in a home where one child had been beaten and had later died. Dr. Duncan said it was known in The Lambton Health Unit that Kim had been "murdered". Dr. Duncan said that in that conversation she spoke freely to discuss her concern for Karie's safety and that Mrs. Harvey agreed with her and was uncomfortable about the situation. She said that Mrs. Harvey advised her that she felt that under The Child Welfare Act there were not actually sufficient grounds to remove Karie. She said that when she suggested Mrs. Harvey seek advice from Mr. Lang, Mrs. Harvey said she had already spoken with Mr. Lang. Dr. Duncan said Mrs. Harvey agreed to remove Karie and she assured Mrs. Harvey

"in spite of the apparent lack of any real reason to do so, that [she] would be prepared to state that in [her] opinion the baby, Kerry (sic), was in danger and in need of protection."

Dr. Duncan said that the reference to "lack of any real reason" related to the absence of evidence that any harm was directed towards Karie. She said that Mrs. Harvey had said there was not evidence that Jennifer Popen had ever abused Karie and that therefore, under The Child Welfare Act, it seemed

doubtful that the Society had a legal right to remove a child who was well and did not appear to have been abused.

I agree with Dr. Duncan's assessment of the situation on August 12, 1976 that, while there may have been no evidence of abuse to or towards Karie, there was a need to act. I would add that, as of that date, Karie would seem at least to fall within the statutory definition of a "child in need of protection" in that his

"life, health or morals...may be endangered by the conduct of the person in whose charge he is."

Mr. Lang's testimony was to the effect that in August 1976, the Sarnia Police Force informed him of Kim's death and of their suspicions and the investigation which had not then been completed. He said that he too was concerned for Karie's safety. He said that after his discussion with Inspector Ross he spoke with Dr. D. McKinley, who also expressed concern for Karie. Mr. Lang said that Dr. McKinley and he agreed that the danger was too great to permit them to "wait to see what was going to happen." He expressed the opinion that Karie was in need of protection right then. He said that he telephoned the Society and spoke with Mr. Lovatt or Mrs. Harvey, his memory was uncertain.

Advised that Mrs. Harvey testified that he spoke with her, he testified that he insisted that Karie be removed, but she demurred saying that no charges had been laid in connection with Kim's death and the Society could do nothing until charges were laid. He said that in response to that position he said that it might be too late if the Society were to wait for charges to be laid because the police investigation was incomplete and the eventual outcome of it was unknown. Mr. Lang said however that, upon conclusion of that telephone conversation at about 3:30 p.m., it was understood that the Society would remove Karie that day.

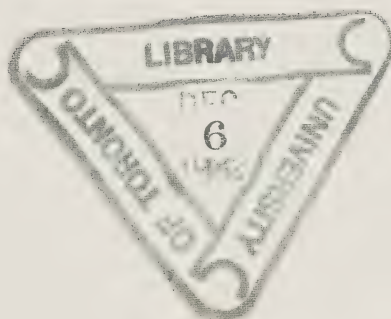
This again was an instance of another agency, really two, the Coroner and the Crown Attorney, initiating an approach to the Society and the Society not seeking out either of them. The

Society might reasonably have been expected to approach Mr. Lang. It is apparent from Mrs. Harvey's testimony that Dr. Duncan suggested she do so. I think it was a reasonable and practical suggestion.

While Mr. Lang originally testified that his conversation with Mrs. Harvey took place on Friday, August 15, 1976, he later amended that testimony and I am satisfied it was on Friday, August 13, 1976. That was the day on which Karie was removed from the family home by the Society.

As one looks at the position adopted by the Society, as represented by Mrs. Harvey after discussion with Mr. Lovatt, with reference to Karie after Kim's death there was no real change in the approach. They were insular. They did not seek advice or assistance or information from anyone. They were prepared to leave a child at risk. In Karie's case they would have done so while they waited for charges to be laid against one or both of the parents or until they had evidence of abuse to Karie. In Kim's case they did so because of failure to pursue the case properly immediately after June 17, 1975 and then because they returned her to her parents' home in May, 1976 on very tenuous bases. They seemed unaware of statutory provisions to be applied. There was no indication of any intra-Society "team" approach to the problem. Mrs. Harvey was still making the decisions without any real consultation with anyone.

In summary, while I accept the validity of Dr. Bates' testimony to the effect that one child of a family may be abused for some reason and another child of the same family remain unscathed, it seems to me that, but for the prompt, forceful and persuasive intervention of Dr. Duncan and Mr. Lang, abetted by Dr. McKinley, Karie too may have suffered injury in his home. He should not have been left so exposed while the necessary investigation was conducted and the appropriate decisions made.



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